

*Dr. Bent
Gey. S.*

REPORT

OF

LAW COMMITTEE

UNDER REMIT OF THE PAROCHIAL BOARD OF THE
CITY PARISH OF EDINBURGH

ANENT

THE BOARD'S RIGHT TO POORHOUSE GROUNDS,

AND TO

OTHER GRANTS AND MORTIFICATIONS FOR THE
USE OF THE POOR.

1861.

EXCERPTS FROM MINUTES OF MEETINGS OF THE PAROCHIAL
BOARD OF EDINBURGH.

Board Meeting, held on Friday the 8th of February 1861.

Bailie BLACKADDER in the Chair.

Mr CURROR moved, seconded by Mr STOTT, the following Resolution :—

‘ Resolved, that Dr BROWN’s motion deserves very serious consideration, whether regard be had to the rights and interests of the Poor or of the Rate-payers; and to enable the Board deliberately, and with a due regard to all the interests involved, to consider and dispose of the motion,’—Remit ‘ to the Law Committee to inquire and report on all questions now pending between the City and the Board, or likely to arise in the event of the main or entire establishment being removed furth of the City; and, so far as practicable, the terms on which these questions might be arranged amicably between the City, and City Creditors and the Board,—the Committee having power to take the opinion of the Law Officers of the Crown, or other Counsel of high standing, for their guidance in any of the questions remitted.’

After some conversation, Mr Curror’s Resolution was agreed to, and the Board Remit accordingly.

LAW COMMITTEE, 15th Feb. 1861.

The remit of 8th February last having been taken up, the Meeting requested Mr Curror, who (as convener of the Finance Committee) is presently investigating the Board’s claim to various Poores’ Mortifications,—to include all the subjects of the remit in his investigation,—and to report. The Report to be put in print, and circulated amongst the Members of Committee, for consideration at a future meeting.

LAW COMMITTEE, 6th June 1861.

The Inspector reported that a proof of Mr Curror’s Report had been sent to Members on Monday evening last. The Meeting considering the length of the Report, and the importance of the questions embraced in it, agree to meet specially this day fortnight fully to consider it. In the meantime instruct the Inspector to examine the Minute Books to see if the Board consented to the feuing of New North Free Church, and to ascertain what was the arrangement with the Town-Council as to the Coach-office.

LAW COMMITTEE, 20th June 1861.

The Inspector reported the result of the search ordered at last meeting. The Chairman stated, that he considered the Report a very valuable one, and whatever views members might take as to the conclusions, he was sure all would agree with him in saying, that the Committee were under a very great obligation to Mr Curror for his most laborious investigations.

After which various members having expressed at length their views, and Mr Curror having read a letter which he had received from Mr Law (the late chairman of the Board) confirming the facts stated in the Report, in reference to the sale of the site of the Free New North Church, &c., the Report was generally approved of, and the Committee remit to the professional members of the Committee, as a Sub-committee, to revise and adjust the Report by next ordinary meeting. The Inspector again to search the Minutes of the Board, from 1840 to 1850, with the view of ascertaining the exact arrangement as to the sale of the site of Free New North Church, and to report the result to the Sub-committee, in order that any requisite alterations may be made on the Report.

SUB-COMMITTEE OF LAW COMMITTEE, 2d July 1861.

The Inspector reported that he was not in possession of the Minute Book of the Board from the period when the Magistrates and Town Council acted as the Parochial Board, viz., from May 1844 to August 1845, and that he was therefore

unable to say what was the exact arrangement made as to the feuing of the site of the Free New North Church. That he had discovered a Minute of Meeting of the Board in 1840, presided over by the Lord Provost, at which it was proposed to remove the Poorhouse buildings out of town, and lay out the present Poorhouse grounds as an ornamental Cemetery, and that the revenue of the ground was to be applied towards the expense of erecting a new Poorhouse. The Sub-committee was of opinion that the views expressed in the Report were strengthened by what had now been stated, and having carefully gone over and adjusted the Report, resolved to submit it to the next meeting of the Law Committee as now complete.

LAW COMMITTEE, 4th July 1861.

Read minute by Sub-committee as to Mr Curror's Report. The meeting adopt the Report as the Report of this Committee to the Board, and recommend that as the questions at issue are between two public Boards, the Town Council should be invited to a conference with this Board, with the view to an amicable arrangement of the claims, either privately or by reference to a counsel of eminence. Instruct the Inspector in the meantime to have the Report printed and circulated among the Members of the Board, so that it may be fully before the Board, and disposed of at its next meeting.

GEO. CAIRNS, Convener.

REPORT, &c.

As 'the poor shall never cease out of the land,' so every Christian State has acknowledged that poverty is an inevitable condition of society, and has admitted its relative liability to support the poor. Various, however, have been the means adopted, in different ages, to implement this recognised State obligation. At first this was attempted by the cultivation and promotion of private benevolence; but that having failed, the obligation came ultimately to be enforced by the State by compulsory enactment. The poor law history of this parish shews both systems in practical operation,—separately and combined. What funds and property remained of any prior poor law system at the passing of the Poor Law Amendment Act in 1845, were transferred, by virtue of that Act, to the first Parochial Board elected under it, and passing through their successors, have now vested in the present Board. The present inquiry relates to the residuary estate of these prior poor law systems, and is shortly this,—

What property and poor's-funds proper belonging to prior poor law systems were extant at the passing of the Poor Law Amendment Act, 1845,—and were transferred by the operation of that Act to the first Parochial Board, as residuary beneficiaries under it,—and passing through succeeding Boards, are now vested in, but unaccounted for,—to the present Parochial Board?

The inquiry necessarily involves an investigation into the poor law history of this parish, and into the special funds appropriated in the past to the use of the poor. For the purposes of this remit, that

history may conveniently be divided into the following distinctly marked periods, viz.:—

- I. The period antecedent to the institution of the Edinburgh Charity Workhouse in 1740.
- II. The period from 1740 to the passing of the Poor Law Amendment Act in 1845: and,
- III. The period since the Poor Law Amendment Act became law in 1845.

Each of these periods had funds and property peculiar to itself. Each left a residue thereof to the succeeding period. Some portions of that residue have existed throughout all the three periods, and are still extant, as will be seen in the sequel.

I. *Poor Law Period*—1424 to 1740.

Previous to the institution of the Edinburgh Charity Workhouse, in the year 1740, the admitted State obligation to support the poor was laid by Act of Parliament on the Magistrates and Council.

The Act 1424, c. 25, provides, ‘that na thiggaris be tholed to beg,’ ‘bot they be seen *by the Councils of the Town* that they may not winne their living utherwaiss—and they that shall be tholed to beg shall have certain token on them.’ This privilege of permissory begging was limited by the Act 1503, c. 70, to ‘crucked focke, seik focke, impotent focke, and weak focke.’ The privilege was further limited by the Act 1535, c. 22, which enacts ‘that na beggars be tholed to beg in ane parochin that are born in ane other.’

But the mode of supporting the poor by permissory begging under magisterial ‘token’ was altered in the year 1579, by the Act of that year, which is the first Act of this country imposing a legal assessment for support of the poor. That statute ordained ‘that the Provost and Baillics of ilk Burgh and Toune,’ sal, betwixt and the ‘first day of Januar next-to-cum, tak inquisition of all aged pure, impotent, and decaied persons,’ ‘quilkes of neecessitie mon live be almes; and upon the said inquisition sall make ane register-buik containing their names and surnames, to remaine with the Provosts and Baillics within burgh,’ ‘and make a eatalogue of the names of the saidis pure people, inquire the men and wemen quhair they wer born, quhadder they ar maryed or unmarried, quhen and be quhom they war maried, and quhat bairnis they have, and quhair their bairnis were baptized, and to quhat forme and trade of life they addresse themselves and thair saidis bairns, gif they be diseased or haille, and abill in bodie, and quhat they get eommonly on the daye be their begging, and sick as neecessarlie mon be sustained be almes, to see quhat they may be maid content of their owin eonsentis to accept daylie to live unbeggand, and to provide quhair their remaining sall be, be themselves, or in hous with others,’ ‘and thereupon according to the number to consider quhat their needful sustentation will extend to in the oulk,’—and then ‘to taxe and stent the haille inhabitants within the parochin, according to the estimation of their substance, without exception of persones, to sik *ouklike charge* and contribution, as sall be thought expedient and sufficient to *susteine the saids pure people*.’

The obligation to ‘susteine the saids pure people’ in this City as

in other burghs in Scotland was thus laid by the last mentioned Act upon the Magistrates, who were thereby bound not only to make up the pauper roll, but to provide ‘quhat they (the paupers) may be maid content of their awin consentes, to accept daylie, to live unbeggand, and to provide quhair their remaining sall be, be themselves, or in hous with others.’ In other words, the statute laid on the Magistrates the burden of making up and keeping the pauper roll—providing a poorhouse, and the necessary pecuniary relief of all the legal poor; in short, the whole duties to the poor of the Parochial Board, as at present constituted. But in relief of that obligation the Magistrates of Edinburgh had certain funds, parliamentary and otherwise, granted to them.

I. *Parliamentary Grants.*

1. The said Act 1579 granted ‘the magistrates right to taxe and stente the haill inhabitants, without exception of persons, in sick oulklie charge and contribution as sall be thought expedient and sufficient to susteine the saids pure people.’

2. The Act 1621, cap. 14, granted all game debts to the use of the poor.

3. The Act 29th April 1686, on the narrative of the great trouble that does arise to ‘his Majesty’s leiges and the inhabitants by the great number of clamorous biggars repairing in and about the city of Edinburgh,’—and with the view of ‘freeing and purging the same of these numbrous biggars, authorised and empowered the Lords of Session, with adviee and consent of the magistrates, to impose such taxes upon all the inhabitants, burgesses, and others within the said toun, Canongate, and suburbs, as they shall find just and necessary.’

4. The proclamation of the Privy Council of Scotland, 29th August 1693, required magistrates to meet and stent themselves for support of their poor. The same proclamation granted *one-half* of the church-door collections to the use of the poor. The first poor’s assessment laid on by the magistrates of Edinburgh, of which they have record, was on 6th Mareh 1695, and was ‘two per cent payable by all the inhabitants of the city, conform to their house rents, shops, and chambers, as they are valued in the book of the stent-money,’—‘to be given to the kirk treasurer of this city for the use of the poor thereof.’

5. The Act 3, George I., continuing the Ale duty, was expressly granted, among other purposes, ‘for settling an annual fund of three hundred pounds per annum towards employing and maintaining the poor of Edinburgh and adjaecent counties, which shall commence and grow due after the first day of July 1718,’—which grant for this among other reasons that the magistrates had ‘built and repaired a large house for aecommodating the poor’ to be employed in manufacture (*i. e.* the first elarity workhouse in Edinburgh in Leith Wynd, now called Paul’s Work), was continued by the Act 9th George I., till 18th July 1761, and by the Act of the 2d of George II. for other 38 years thereafter, and by the 38th George III. cap. 54, for other 38 years thereafter.

6. (Finally.) Several other Statutes gave all fines imposed in breach of them to the use of the poor.

II. *Non-Parliamentary Grants.*

7. The common good of the city. By decree-arbitral, which constitutes the Sett and Constitution of the city of Edinburgh, dated 22d April 1583, made by certain ‘judges arbitrators’ therein named, chosen for the part of the Council, hail merchants, and hail craftsmen, indwellers of Edinburgh—‘The Right Potent and Illuster Prince ‘James, be the grace of God, King of Scots, Our Sovereign Lord, being ‘odsmen and oversman,’ it is found and decreed, that ‘as the ‘hail body of the town, consistand of merchants and craftsmen, does ‘bear an common burden of watching, wairding, *extenting*, and of the ‘like *portable charges*, having an common-good, proper to nane,—swa ‘neidful it is, for making an equal unity and charitable concord, that ‘there be in the hail town but an collection and an purse, not peculiar ‘to any, but common to all, of the hail dewties and casualties,’—and so ‘thir dewties and collectionouns, casualities of entres—silver, upsets, ‘*owkly pennies*, unlaws, and sicklike, to be received in all times coming, of all merchants and craftsmen indifferently, be put in the ‘said common-purse, and employit be the advyce and command of the ‘Provost, Baillies, and Counsil, for *support and relief of the FAILYIET ‘and DECAYET burgesses, merchants, and craftsmen, their wyves, bairns, ‘and auld servants, and UTHER POOR indwellers of the town.*’

By a subsequent clause, ‘it is ordained that baith the saids parties, merchants and craftsmen now present, *and their successors*, sall ‘inviolably observe, keip, and fulfil this present appointment and ‘decreit-arbitral, and every heid, clause, and article contcinit therein. ‘Likeas his Majesty and the saids judges wills and ordains them, ‘with willing hearts, to put in oblivion all bypast enormities, imbrace ‘and entertain love and amity,—and, as they are of ane city, swa ‘to be of ane mind; then sall they be acceptit of God,—stop the ‘mouths of them quhillk tuik occasion be their division to slander the ‘truth,—then sall they be mair able to do our Sovereign Lord acceptable service, and have an standing and *flourishing common-weal.*’ But ‘whasoever contravenes the samen,’ (the decree-arbitral) ‘sall be repute and halden ane troubler of the quiet estate of the common-weal, ‘—incurre the note of infamy,—and forefault and tyne their fredome ‘for ever,—and otherwise to be persewit and punishit as seditious persons, conform to the laws of the realm, with all rigour and extremity.’

This decree-arbitral constitutes the following funds the common good of the city, viz.—

‘Entres—Silver ‘merchant prenteis,’	.	.	.	£1	10	0
‘Upset—end of prenteiship,	.	.	.	5	0	0
‘Skynner	}	Entrie	.	1	0	0
‘Chirurgian						
‘Goldsmith						
‘Flesher						
‘Cordiner						
‘Tailyeour						
‘Baxter	}	Upset	.	5	0	0
‘Hammerman						

Carried forward, £12 10 0

		Brought forward,	£12 10 0
' Mason	}	Entrie	0 13 4
' Wright		Upset	3 6 8
' Webster	}		
' Waker		Entrie	0 10 0
' Bonnetmaker		Upset	2 10 0
' Furriour			
' by their owkly pennies, and dewties of their Bur-			
' geships			
' Dean of Gild Burgeship,		. . . . .	5 0 0
' by the Dewties foresaids,			
' Wha was na Burgesses prenties, double dewties,			
' by his dewty to gild, quhilk is			
' for his Burgesship, and			
' for his Gildrie			
' Owkly pennies			
' Unlaws and sicklike			
Scots money,			£84 10 0

And the common good so defined, was expressly constituted ' for support and relief of the failzeit and deeayet burgesses, merchants, and craftsmen, their wyves, bairns, and auld servants, and uther poor indwellers of the town.'

8. The Arehdeanery of Lothian.—It appears from a charter, dated 29th July 1587, that King James VI. ratified a previous grant of the *Kirklands, Trinity College, Provostry of Kirkfield, and Archdeanery of Lothian*, for the use of the ministers, college, AND POOR—and in 1612, a new grant of the said *haill Kirklands* for maintaining the ministers, college, and POOR was given to the Council.'

Besides lands, there were certain sums mortified in the hands of the magistrates for behoof of the poor. Among these were—

9. Sir James M'Lurg's mortification,	. . . . .	£166 13 4
10. Mrs Hair,	. . . . .	222 4 6
11. John Riddell of Grange,	. . . . .	100 0 0
12. Thomas Stodhart,	. . . . .	44 8 11
13. Sir Thomas Hope,	. . . . .	83 6 8

	Accumulated in 1719 into one bond p.	£616 13 4
14. John Wightman of Maulsley,	. . . . .	500 0 0

	Accumulated into one bond p.	£1116 13 4
15. R. Johnston's mortification,	£3000 0 0	
16. Paul's Work do.	215 0 0	

	Aceumulated into one bond p.	3215 0 0
... Forglen's acre, £10 per ann.—say	£250 0 0	
... Feu-duties, £5, 11s., per ann.—say	138 15 0	

Carried forward,	£388 15 0	£4331 13 4
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	Brought forward,	£388 15 0	£4331 13 4
... Bond, James Syme, solicitor, <i>p.</i>			
1000 merks—say	.	55 0 0	
... Bond, Earl of Buehan, .	.	50 0 0	
Besides arrears of interest.			
... Bond, David Hay of Naughton, <i>p.</i>			
1000 merks—say	.	55 0 0	
		<hr/>	548 15 0
17. Fisher's mortification,	.	.	460 13 4
18. Sehaw's do. £15 per ann.—say	.	.	250 0 0
19. Seat, West Church, £2 per ann.—say	.	.	25 0 0
20. Feu-duty, 43 Leith street, £2, 15s. 6d. per			
ann.—say	.	.	70 0 0
			<hr/>
	Mortifications,		£5686 1 8
			<hr/>

21. Charity collected in poor boxes.
22. Donations and legacies given for the use of the poor. Besides,
23. The property and use of the first Charity Workhouse established in Edinburgh, in Leith wynd, called Paul's Work, which was appropriated to the use of the poor prior to the year 1718.

The Council while so liable to maintain the poor in house and bodily sustenance, for their own convenience administered the poor's funds through the medium of the several Kirk-Sessions, who acted as distributors, agents, or delegates of the Council, who seem to have paid to each Session such a sum as that Session reported to be necessary for the needs of the poor of their particular congregation or parish. The Workhouse, however, had a separate management specially given to it in the Act agreeing to fit up a Workhouse, and appropriating the Leith wynd or Paul's Work property, which had previously been an industrial school, to that purpose. The Act of Council is dated 24th March 1731. The managers were—6 members of Council,—3 members of the College of Justice,—3 persons named by the Justices of the Peace,—and 9 of the General Sessions of 'Edinburgh, being ane elder of each parish to be named by the said 'General Sessions.' This Workhouse was just part implement by the Council of their obligation to house and maintain the poor under the Acts of Parliament, and an application of the poor's funds and property in the Town's hands to that purpose. By the constitution of this first City Workhouse, it was provided that, 'if upon trial it shall 'appear that the several funds hereby appointed for defraying the 'expense of the said Charity Workhouse and purposes before expressed, 'shall not be sufficient therefor, in that event, the said Lord Provost, 'Magistrates, and Council, have agreed and concerted with the said 'Lords of Council and Session, to lay on purpose such other funds 'for making good such deficiency, to be collected and levied from the 'persons liable, in payment thereof, in manner warranted and directed 'by the laws and *Acts of Parliament* in that behalf.' And matters remained on this footing down to the year 1738, when a proposal was made which ended in the erection and endowment of the present Edinburgh Charity Workhouse.

In the meantime it will be kept in view, that up to the date of

this proposal (1738) the Council was, by Act of Parliament, bound not only to protect the poor, to keep the pauper roll, to provide houses for them to live in, ‘unbiggan,’ and to fulfil all the obligations in favour of the poor now laid upon the Parochial Board of the City parish, but also had the agreeable duty of adjusting and settling accounts with themselves, while they had ample funds at their disposal, as above specified, in relief of that obligation, and an unlimited power of rating besides; a power which they exercised from 1695, by laying on such a rate annually as circumstances seemed to require. The Council, however, seems to have resorted to every expedient for keeping down the rate. Some of these expedients were curious. They got ‘Benefits’ in ‘Corrie’s Rooms,’ and at ‘Edinburgh Assemblys;’ annual ‘Benefit Plays’ at Theatre; ‘Special Collections’ at church doors; at Episcopal, Quaker, Roman Catholic, Glassite, Independent, and other meeting houses; and they occasionally personally, and through committees and printed circulars, solicited donations and voluntary contributions from all classes in society, generally beginning with the College of Justice, and passing through the public bodies, the banking and private companies, down to every individual in the city, having the ability and inclination to aid in supporting the poor. By these means the stent was kept under, and apparently it stood at the original 2 per cent. established in 1695, till 1813 when it was raised from 2 to 5 per cent.

In 1738, however, certain changes took place not affecting the liability of the Council to sustain the poor,—for that obligation never ceased in any respect till the passing of the Poor Law Amendment Act in 1845,—but in reference solely to the administration of the funds appropriated for the support of the poor, and to the house accommodation they required, and which the Council was bound to provide.

These will now be adverted to, but they fall within the

II. *Period from 1740 to 1845.*

From the institution of the Edinburgh Charity Workhouse in 1740 to the passing of the Poor Law Amendment Act in 1845, the admitted State obligation to support the poor, and provide the requisite house accommodation, continued, as formerly, to lye by Act of Parliament on the Council. But the Sessions were superseded at their own request in the administration of the poors’ funds, which were transferred to the Managers of the Edinburgh Charity Workhouse.

It having been found in the year 1738 that ‘the funds that are chargeable with the maintenance of the poor, though very considerable, are not sufficient, whence hitherto the deficiencies necessary *behoved to be answered and paid OUT OF THE COMMON-GOOD,*’—the kirk-sessions proposed that the former manner of administering the funds be discontinued, ‘and ane charity workhouse be erected, where all the poor should be accommodated, maintained, and employed at work, and that *all the poor’s funds* be thereto, and to no other use applicable.’ This proposal was approved of, and on 14th November 1739, the Magistrates and Council entered into a minute, by which they appointed £200 sterling annually *out of the Revenues of the City*, to be paid to the *Kirk Treasurer* for behoof of the Workhouse, beginning at the first term after the Workhouse shall be built, and capable for the reception of the poor,—and *thereafter to be due and payable FOR EVER yearly.*

In addition to said sum, they conveyed ‘for the subsistence and employment of the Poor of the said City who shall be admitted and received into the said workhouse from time to time—and for granting supplies to out-pensioners’—‘the whole money that shall arise daily, weekly, and yearly from collections at the church doors,—and at Episcopal meeting-houses,—dues for marriages not solemnized in churches,—one-third of the dues of the dead and passing bell,—dues for burial warrants,—green turfs,—charity collected in the poor’s boxes at Grayfriars’ gate,—*annual rents of sums of money, and rents of houses and shops mortified for the use of the poor* of the said city,—annuity of two per cent of poor’s rate established by Act of Parliament,—fines for fornication,—all sums that hereafter should be bequeathed or left by any person for the use of said poor.’

The above arrangement was, on 23d February 1740, reduced into a formal contract of agreement between the Council and Kirk Sessions, and the Council’s own view of the effect of this agreement is, that thereby ‘the *administration of the poor’s funds* is conveyed to the Directors and Managers of the intended Workhouse for the poor, to take place whenever the said house shall be made fit and ready for the reception of the poor.’ And so it was. The then known property and funds applicable to the poor, before stated, Parliamentary and non-Parliamentary, being,—

I. *Parliamentary.*

1. The old stent or poor’s assessment.
2. Game debts.
3. The poor’s assessment under first City Police Act.
4. Church-door collections and poor-rate under proclamation.
5. Annuity of £300 from Ale duty.
6. Unlaws.

II. *Non-Parliamentary.*

7. £200 per annum out of common good,—the whole of which, as already seen, was poor’s funds.

8. Rents of Kirklands.

9–20. Sums of Money Mortified for the use of the poor, amounting to a capital sum of £5676, 1s. 8d. before specified.

21. Charity in poor’s boxes.

22. All sums to be afterwards left for the use of the poor,—*besides*,

23. The property and use of the first Charity Workhouse called Paul’s Work,—*with the addition of*

24. Collections at Episcopal and other meeting-houses.

25. Dues of marriages not solemnized in churches.

26. One-third of the dues of the dead and passing bell.

27. Dues of burial warrants and green turfs; *and*,

28. Fines for fornication:—

Were conveyed by the Magistrates to the Managers of the Workhouse, to be administered by them; but the liability of the City for what was necessary *beyond* these known funds and property was not affected by the arrangement. There was *no obligation* undertaken on the part of the Managers, that for what they got they would relieve the City of *the burden* of the poor. That obligation remained under the Acts of Parliament and Set of the Burgh as before. In the Council’s own words, ‘they did not interfere with

‘ the collection or disposal thereof, nor did they exercise any controul in the management of the poor otherwise than by their representatives at the Board of Management of the hospital; they, in fact, have, from the date of the contract of 1740, transferred to the Directors of the Charity Workhouse, the entire management of the poor, and of the funds levied for their use,—limiting themselves to the duty of providing these funds by authorizing an assessment to such an extent as appeared to them to be right and proper.’ ‘ It is with the Magistrates alone that the whole power of administration rests, and all acts relative to the poor must proceed on their authority.’ The only *relief* the Council got by this agreement was relief of the bother of administering the poor’s fund. Accordingly from the date of the agreement of 1740, the Managers of the Workhouse annually reported their accounts to the Council, with an estimate of the probable expense for the ensuing year, and the Council laid on such an assessment as was requisite to meet the estimated necessities of that year. The Corporation, quite alive to their obligation to house and sustain the poor out of the common good, or other funds at their disposal, in part implement of that obligation,—and considering that upon due examination ‘ had, the fittest place for the workhouse ’ ‘ is where ‘ Bedlam is now situated, in the New Grayfriars’ yeard, and the enclosure thereto adjoining on the west, called the Grass yeard : ’ and, ‘ considering that the advantages *which will arise to this City from having the aforesaid workhouse built, and THE CITY’S POOR* employed and maintained therein, will far exceed any advantage that can arise TO THIS CITY from having said Bedlam and grass yeard employed to any other use : Therefore the said Lord Provost, Magistrates, Council, and Deacons of Crafts, did, and hereby do, UNANIMOUSLY GIVE, GRANT, and APPROPRIATE to the use of the said intended Workhouse for ever, at least so long as the poor of this City shall be employed and maintained therein in manner settled ’ by the agreement above referred to—‘ All and Hail the said Bedlam and grass yeard, described and lying as aforesaid.’ The grant was made by act of Council, dated 11th June 1740, and was made under burden of settling with the then tenant of the ground,—of right to make an avenue through the ground, and of right to ‘ a corner of the said yeard ’ for laying causeway stones sufficient for the City’s use.’ Upon the ground so granted, the Managers built the Edinburgh Charity Workhouse, adding to it, till it has reached its present goodly proportions.

The *first* Royalty Aet was passed in 1767 (7 Geo. III., cap. 27). It extended the Royalty, and with it right to the Magistrates to levy poor’s money over 34 acres 1 rood 12 falls and 26 ells of Broughton; 32 acres of Barefoot Park; 6 acres 10 falls and 12 ells of Moultrees-hill; 2 acres 2 roods 13 falls and 24 ells; and 1 rood 35 falls and 12 ells farther of Broughton : also over Forglan’s lands and Allan’s parks; the lands of Calton Hill; the lands of Greenside; and the lands of Piardy; also over Heriot’s Hospital grounds in the New Town, specified in the 1st section of the Act.

In 1785, the *second* Royalty Aet was passed, (25 Geo. III. cap. 28). It extended the Royalty over other 5 acres of Broughton; and over 1 acre, 1 rood, and 11 falls belonging to the Register House trustees; and, like the previous statute, empowered the Magistrates to levy poor’s money within the extended district, the same as from the other portions of the Royalty.

In 1786, the *third* Royalty Act was passed, (26 Geo. III. cap. 113). It extended the Royalty over certain additional portions of Broughton, and empowered the Magistrates to levy poor's money over the extended district.

In 1800, 'an Act for the better relief of the poor in the City of 'Edinburgh and the suburbs thereof, and certain districts adjoining 'thereto' (41 Geo. III. cap. 3.) was passed, 'owing to the present 'scarcity and high prices of provisions.' This Act gave certain trustees power, and directed them 'to make up lists of all the indigent 'persons or families within their respective districts, which shall 'appear to them to require relief during the ensuing year.' It authorised certain assessments to be levied, and empowered the trustees to determine the quantity and kind of relief to be given. The Act was only to continue for a limited period, but the trustees under it were taken bound to hand over any unapplied funds raised under it to the treasurer of the Charity Workhouse, and to the treasurers of the Canongate and St Cuthbert workhouses. All these Acts, and others to be afterwards mentioned, extended the right to levy poor's money within the Royalty, and added to the assessable area, and consequently to the amount of the poor's assessment annually laid on, and to the relief of the obligation on the Council and the City common-good and patrimony to sustain the poor.

No change took place or was sought by the Council on the one hand, or the Charity Managers on the other, for the period of 61 years—from 1740 till 1801, when it was proposed to add to the Workhouse income by feuing the Workhouse grounds as after mentioned. The position and rights of parties during these 61 years, were shortly these :—

1. The City, under the Acts of Parliament foresaid, were bound to maintain the poor out of the funds appropriated to the use of the poor before specified, any deficiency of funds 'behoving to be answered and paid out of the common-good' and patrimony of the City,—the Workhouse Managers being the medium through which the charity flowed from the City common purse to the common poor.

2. The arrangement in 1740, under which the Workhouse was erected and put under a separate management—the City giving over to the Managers £200 in cash from the revenues of the City common-good, and the whole known poor's funds and property before specified, *for administration* by the Charity Managers—in no respect altered the previous liability of the Council. In particular, the common good remained as previously, liable for what might be necessary beyond the other sources of revenue, for the proper maintenance of the poor. The common good '*behoved*' to make up any short coming.

3. Sensible of the City's liability, and that the funds at the disposal of the Workhouse Managers were insufficient to maintain the poor, the City granted and appropriated Bedlam and the 'grass yeard,' portions of the common good and patrimony of the City, for the farther 'use of the said intended workhouse for ever, at least so long as the 'poor of the city shall be employed and maintained therein.' In other words, in addition to the £200 and known poor's funds and property, the City gave the rent of Bedlam and the grass yeard over, to be administered by the Workhouse Managers,—*not* in satisfaction of the City's liability to maintain the poor,—which liability always re-

mained with the City,—*but* to account of the obligations the City lay under to maintain the poor. By appropriating Bedlam and the grass yard, part of the common good of the City, to the poor, the common good was just *relieved* of such a sum annually as would have been required to purchase similar accommodation for the workhouse elsewhere. The grant was an appropriation and dedication *by the City*, of the *City's common-good*, in satisfaction of a purpose for which it was specially made liable, by the ‘Most potent and Illuster Prince James,’ who in his Royal wisdom, in the Sett and constitution of the City, instituted the common purse to ‘susteine’ the ‘failziet,’ ‘deceayet,’ ‘auld servants,’ and ‘uther pure indwellers ‘of the town.’ It is clear, therefore, that the appropriation was no *misappropriation* by the Council, of City funds,—all the City did being to dedicate and appropriate *a part* of the common-good of the City to liquidation so far, *of a proper common-good obligation*. The ground on which the workhouse was built, so appropriated by the Corporation for the use of the poor, has ever since admittedly been used for the very purposes of the grant, and, strictly in terms thereof, for the use and benefit of the poor. And so both by usage, and under the original grant, it appears that the ground so appropriated, with the erections thereon, has, in the sense of the Statute 1845, been poor’s property proper for the last 120 years.

As already mentioned, in the year 1801 the Workhouse Managers suggested to the Council, *with the view of benefiting the Charity*, and thereby relieving so far the common good, and payers of the poor’s tax or stent,—to feu out the poor’s grounds for the purpose of building,—and various meetings took place between the workhouse managers and the magistrates on the subject,—but the suggestion was at that time abandoned.

In 1809, the *fourth* Royalty Act (49 Geo. III., cap. 21) was passed. It extended the Royalty, and with it the right to levy poor’s money over certain portions of St Cuthbert’s; and, for the poor’s rates levyable from the lands by it, and by the previous Royalty Acts disjoined from St Cuthbert’s, gave that parish compensation in money, which has since averaged from £300 to £500 per annum. The Council were taken bound to pay this compensation, but against it they were entitled to take the sum out of the poor’s assessments to be levied by them. Both liability and right of relief, however, were transferred by the Poor Law Amendment Act 1845, and now lie on the Parochial Board.

In 1814, the Calton Bridge Act (54 Geo. III., cap. 170) was passed. It extended the Royalty, and with it the right to levy poor’s money over the lands between east end of Princes Street, and Calton Hill, and the new jail. These extensions increasing the assessable area, increased the amount of the assessment and the fund of relief to the Council, of the statutory obligation on them, and on the common-good and patrimony of the City to sustain the poor. Yet, with these extensions, the Charity Managers seem to have been kept by the Council always short of the funds necessary to sustain the poor. For, in 1819, the previous suggestion to feu the Charity grounds for the benefit of the Charity was resumed, by the Managers presenting a memorial and representation to the Council, in which they proposed,—(1.) That Bedlam, the hospital, and childrens’ house, should be taken down, ‘and the ground feued by public roup for the

‘purpose of building’—‘The charters to purchasers to be granted by the Magistrates, with concurrence of the Managers, to be holden off the City. The feu-duties and casualties to be taken payable to the treasurer of the Charity Workhouse, for behoof of the poor of the City of Edinburgh,’ employed and maintained in the workhouse.—(2.) That the pauper lunatics should be elsewhere provided for, by a new asylum, or by contributing to Morningside.—(3.) That a new children’s hospital should be built in the form of a wing to the workhouse.—(4.) That a corner of the ground should be given to the Road Trustees to widen the road at east end of Teviot row,—and the compensation to be got therefor, with the value of old material of houses removed, should be applied ‘to the erection of the new building, or otherwise disposed of for the benefit of the institution.’

This proposal having been remitted by the Council to the Magistrates, old magistrates, convener, &c., they, on 16th February 1819, reported their ‘opinion that *the plan proposed ought to be gone into*, but ‘that if the feu-duties are taken payable to the governors of the Charity Workhouse, the casualties of superiority, which *will of course be taxed*, should be reserved to the Town, the superiors;’ and that a remit should be made to a committee to meet the Workhouse Governors, and ‘to adjust the plan, so that the work may be proceeded in.’ This Report having been laid before the Council, the Magistrates and Council approved of it on 17th February 1819. But though approved of, this proposal also seems to have been abandoned at the time, as it was revived again in 1823, as will immediately be seen. Meantime, be it observed, that in 1819, the Council approved of feuing the Charity grounds, *for the benefit of the Charity*, and only conditioned that the Magistrates should remain superiors, to the effect of granting the charters, and receiving the casualties of superiority, which *were to be taxed*, and thereby insured the *highest feu-duty* that could be got annually to the Charity, out of the Charity grounds.

In October 1823, a proposal was made by the Charity Managers to transfer the Charity Workhouse, from the present house, to *Queensberry House*. A joint meeting of a committee of Council and Workhouse Managers was held on 30th of that month on this subject,—and, as *Queensberry House* could not be got, ‘the Managers who disclaimed all idea of making any profit of the ground on which the present Charity Workhouse stands,’ suggested, ‘that perhaps *that area might be placed at the disposal of the town, if premises containing similar accommodation were provided for the Workhouse in some situation in the vicinity of the town,* and the lunatics provided for in the new asylum. The suggestion ‘was deemed well worthy of serious consideration.’ The minutes being reported to the Council, that body ‘approved of the Report,’ and re-appointed a committee ‘with powers to carry forward the object of the Report.’

But notwithstanding, the matter seems to have been prosecuted no farther at that time. Meantime observe, that the Council approved of a proposal to give the City back the ground, *only* on their providing similar accommodation in some situation in the vicinity of the town, and the lunatics being provided for in the new asylum. The right to the *profitable occupation of the ground* was again admitted by the Council—a right which they only sought to acquire by providing as good elsewhere in the vicinity of the City.

In 1827, the Improvement Commissioners proposed to the Managers to surrender portions of the workhouse grounds for the purpose of the Improvement Act. A joint meeting of the inhabitants, the Council, and the Workhouse Managers was held on 17th March 1827, at which, 'after a lengthened communing,' the Charity Managers made certain proposals, providing—(1) That the grounds should remain as they then were *till a new Charity Workhouse, Children's Hospital, and Bedlam* were provided. (2) That the new workhouse area so to be provided, should be not less than three Scotch acres. (3) That the Managers should have power *to remove* the house in part, and to give up part of their grounds *on a proper arrangement made to their satisfaction*. (4) That the Improvement Commissioners should undertake this arrangement *as the conditions of their having the Charity Workhouse grounds made over to them*. Finally, that the bill should be so framed as to admit of the Managers *receiving compensation in money* from the Commissioners, or in some other way than by the endowment of a workhouse. These proposals were declared acceptable to the parties present, but the representatives of the Council having 'expressed themselves doubtful whether the Council might approve of the transfer of the grounds to the Commissioners, and might not be disposed to *keep them and undertake for the new workhouse themselves*, they agreed to leave that matter to the Council.' The Council afterwards, however, approved of the report, and '*resolved to surrender to the Commissioners under the Act*, the grounds and buildings now occupied by the Charity Workhouse.'

Notice here, that the Council approved of the arrangement, by which *every right of an absolute proprietor* was accorded to the Workhouse Managers, even to the *surrendering of the ground for a money consideration*; and when their representatives suggested that the Council might keep the ground, it was only 'on undertaking for a new workhouse themselves,' that they did so. But the Council 'approved of the arrangement, and surrendered the ground to the Commissioners in terms thereof,—one of which terms was—that the *Workhouse Managers, NOT THE COUNCIL*, might receive a money compensation from the Commissioners therefor.'

In 1828, the first City Improvement Act (7th and 8th Geo. IV., cap. 76) was passed. By its power is given to the Improvement Commissioners to remove the Charity Workhouse, on providing another, 'with the concurrence of the Managers of the Charity Workhouse,'—and it is declared that any new workhouse to be provided under the Act should 'be conveyed and made over to the said Lord Provost, Magistrates, and Council, *and be possessed and enjoyed by the Managers of the Charity Workhouse*, in the same manner, and as freely in all respects as their present areas and houses are possessed and enjoyed under the provisions and conditions contained in the different existing rights and titles thereto, and other deeds and writings affecting the same.'

In 1831, the second Improvement Act (1st and 2d Will. IV., cap. 45) was passed. It repealed the right of the Commissioners under the first Act to remove the Charity houses; but authorised them 'to make a roadway only through the *grounds belonging to the said Managers*,—provided always, that the previous consent in writing of the said Managers shall be obtained thereto.'

Here it will be observed, that the Charity grounds are treated as

belonging, and acknowledged in the Act of Parliament to belong, to the Charity Managers,—on whom every right of an unlimited proprietor is conferred by the Act. The Council surrender any contingent or reversionary right they had in the grounds to the Commissioners. The Commissioners accept that surrendered right on the terms contained in the Act of Parliament. The Act acknowledges the Charity grounds, in a question with the Commissioners, to be the unlimited property of the Managers,—and hence, besides possession and usage for nearly a 100 years, on the part of the Charity, and a surrender of any contingent interest therein by the Council,—there is here a statutory title conferred on the Charity Managers, to the Charity grounds and buildings.

So standing the expressed and declared rights of parties, the 'Act to appoint Trustees for the creditors of the city of Edinburgh' was passed on 29th August 1833. By section 1st, Trustees are appointed 'for the purpose of realising and distributing among the creditors, in the most expeditious and economical manner, *the whole estate and effects, heritable and moveable, real and personal, wheresoever situate, and of whatever denomination, belonging to the city, which are legally liable for the city debts, and attachable by the diligence of the city's creditors.*' Section 10 vests all estates liable for debt, and attachable by diligence, belonging to the city in the trustees. But same section declares, 'that nothing herein contained shall divest, or be held to have divested, the corporation of the estates and effects, heritable and moveable, real and personal, *belonging to the said city, which are not liable for the said debts, nor attachable by the diligence of the said creditors.*' That is to say, while every estate properly belonging to the city is given to the creditors, the charity grounds and mortified funds extant at the date of the Act, held in name of the city for behoof of the poor, and other funds held only in trust, are excepted from the operation of the Act. And hence the Workhouse Grounds and Mortifications so held did not fall within the Trustees' Act. The Act only transferred to the trustees such property as the city then had burdened with such mortifications, dedications, or debts as then attached to it. The Act only gave what the Council had and could give, no more. But the Charity Workhouse Grounds and Mortified Moneys foresaid were not the property of the Council,—were not liable for the ordinary debts, or attachable by the diligence of the ordinary creditors, of the corporation, but were purely trust estate held for behoof of the poor, and hence the Act did not and could not apply thereto.

By section 12, however, the trustees were directed to advertise for claims, and make up a state of ranking of the city creditors; and, by section 13, the trustees were directed to take an account of the city property and debts.

Although the Charity Workhouse Grounds and Mortified Moneys were not affected by the City's Trustees' Act, the charity or poor's trustees, for the time being creditors of the city, in respect of the mortified money and other funds made over in the contract with the city in 1740, and for the £200 per annum, payable by the city under it, fell as creditors to lodge a claim under the Act. The claim has not been found; but the ranking admitted under it is extant,—and will afterwards be adverted to. It need only now be noticed, that the claim fell to be lodged by the Council, the then poor's trustees. The Council thus in a sense was both debtors and creditors in the claim,—and the admitted ranking

upon it should in consequence be conclusive against the Council. And this the more so, that a very great deal of investigation seems to have been made into the claim, which apparently was not admitted as a debt of the city till after the passing of the City Agreement Act of 1838, afterwards adverted to.

In the meantime, before the passing of that Act, the Managers, in 1836, again moved in the removal of Bedlam and the Children's Hospital. On 19th July 1836, the Managers approved of the object of removing Bedlam and the Children's Hospital to a more suitable locality, and of 'the proposal for disposing of the present site of the buildings for the purpose of raising funds to enable the Managers to carry into effect this important public object,' and appointed a committee to communicate with the Council and City Creditors, and to report. The Council having remitted the resolution of the Workhouse Managers to the Plans and Works Committee, that committee reported as follows:—'That as it is an object of great public importance, in which the credit and character of the city are no less concerned than the interests of humanity, to effect the removal of Bedlam from its present confined locality, to a situation in the country, with a proper extent of airing ground, where the health and comfort of pauper lunatics may be better promoted, and the cure of the moral malady more likely to be accomplished,—it is expedient and desirable to give every assistance to the Managers of the Charity Workhouse in their endeavours to obtain funds for this purpose,—*approve of their resolution to sell or feu the present site of Bedlam*, and all the space to the east of the road which intersects their ground, to enable them to raise such a sum as, with what is expected to be realised from the accumulated capital of the Morningside institution, may be sufficient to make provision for a new lunatic asylum; that it is the opinion of the committee that the Town Council should *not hesitate to give up* GRATUITOUSLY *the contingent and remote interest which they have in this ground to the Managers of the Workhouse*; without which cession the ground cannot be disposed of. The ground possessed by the Charity was conferred on the institution in perpetuity, so long as it shall be devoted to the purposes of the charity. It therefore appears that it never can be available to the city or its creditors so long as it is held by the charity, and employed to its present or a similar purpose. As it cannot be doubted that if the city's interest is not given up, the charity will continue to use the ground as hitherto, it appears to the committee that the Council make no sacrifice in ceding any right they may have, while, on the other hand, it would be *unfair to attempt to take advantage* of the desire of the Managers to dispose of their ground, for the public purpose contemplated, *by insisting on any part of the price or FEU DUTIES being made over to the town*. But while the committee recommend, therefore, that the ground should be *disponed irredeemably to the Managers*, this should be done on the following conditions:—1st. That the proceeds derived from the sale or feuing of the ground should be applied strictly in making suitable provision for pauper lunatics, providing a new Children's Hospital, and other purposes connected with the charity.' '2d. That in disposing of the ground, stipulations shall be framed for the purpose of securing a road or street, of not less than 60 feet in breadth, in continuation of the line of the south approach to the middle walk of the Meadows—if the Commissioners of Improvements shall resolve

‘on carrying through this part of the works provided for in their Acts.’
 ‘3d. ‘That the city wall, which bounds Bristo Street, shall be removed,
 ‘and a space of ground added to this street, so as to make it, in its
 ‘whole length, of the uniform breadth of 45 or 50 feet.’ That report
 having been brought up, the Council on 30th August 1836 approved
generally of the report, subject, however, to such regulations in *the detail*
of disposing of the property, which is burgage, as may be ‘arranged.’
 And the Council authorised the committee to communicate with the
 trustees for the city creditors, in order to obtain their concurrence to
 the transaction.

This was accordingly done by the City Clerk on 31st August 1836;
 but on 19th September 1836, the trustees intimated that, ‘although it
 ‘appears that the Managers of the Workhouse cannot be deprived of
 ‘any portion of the ground possessed by them, while occupied for
 ‘the purpose, and in the manner specified in the contract in 1740, they
 ‘do not feel themselves warranted to sanction a transaction, under
 ‘which large prices, or high feu-duties, may be obtained for a portion
 ‘of that ground, without a suitable arrangement being made for a *rea-*
 ‘*sonable proportion* of the price or feu-duties, which may be obtained for
 ‘the ground, being secured for the benefit of the city, and of the credi-
 ‘tors of the city.’ This and all opposition on the part of the city credi-
 tors was, however, in 1841 waived in favour of the Workhouse, as
 will afterwards be seen.

Meantime, notice here that the Council approve of the committee’s
 recommendation, ‘to give up gratuitously the contingent and remote
 ‘interest which the Council have in this ground,’ and ‘to dispo-
 ‘irredeemably to the Managers,’ and that that interest was effectually
 given up, ‘subject to such regulations in the detail of disposing of the
 ‘property, which is burgage, as may be arranged’ by the Council.
 At same time the concurrence of the City creditors was to be asked—
 was asked, and declined—although, as already seen, this ground, as
 well as the common-good generally, and other mortified funds for be-
 hoof of the poor, was not carried to nor vested in the trustees, but was
 expressly excluded from the operation of their Act, which only vested
 them in the proper city estate. The refusal of the city creditors,
 therefore, cannot affect the Council’s grant, seeing that these creditors
 had nothing whatever to do with the subject of the grant. And, be-
 sides, as will afterwards be seen, the creditors in 1841 departed from
 all claim to the grounds, and admitted the right of the Managers to the
 Charity Workhouse to be such, that the Workhouse and grounds ‘can
 ‘be adjudged and sold for the benefit of the creditors’ of the charity.
 In other words, that the Charity Managers had an absolute and un-
 limited right to these grounds for the use of the charity. Be this,
 however, as it may, this is obvious, that so far as the Council was con-
 cerned, the city’s contingent right was agreed to be surrendered gra-
 tuitously to the Workhouse Managers, to whom the Council agreed to
 dispo-
 ne the property *irredeemably*, to enable the Managers to remove
 their establishment out of town.

On 27th July 1838, the City Agreement Act was passed. By sec.
 40, it repealed the Trustees’ Act, unless only in so far as the Lords of
 the Treasury were concerned. By sec. 41, the Magistrates are required
 ‘to compound for all and every debt due, and obligation contracted by
 ‘them and their predecessors in office, prior to 1st June 1833,’ by

granting City Bonds therefor under the Act. Sec. 43 enacts, that the trustees ranking under the Act 1833 is to be good and effectual under this act. New claims are to be received and considered by the commissioners under this Act, and admitted or disallowed in terms of it. Sec. 60 enacts, that all unclaimed annuities, after the lapse of 20 years, shall belong to the Magistrates. Sec. 61 makes over the property of the city in security of the Bonds. Sec. 62 enumerates the property so made over in Schedule A, which is meant to include everything belonging to the Town, but what is enumerated in Schedule B. If any omission should have been made of property from these schedules, the Act declares that such omitted property shall, notwithstanding, be held to be included in Schedule A, unless it be excepted by the Act from its operation. Schedule B contains the revenue from certain customs which are pledged to the extent of £1000 per annum. But neither Workhouse grounds, nor mortified funds and property foresaid, are included in either schedule; and the fees payable on entry of burgesses and guild-brethren are specially excepted from the operation of the Act. Sec. 63 declares the common-good, so far as made up of market customs specified in Schedule B, liable for £1000 per annum. Sec. 65 declares, that the Common-good in Schedule B (*i. e.*, said market dues and burgess and guildry fees) shall be inalienable, and ‘the annual revenue thereof shall always be applicable to the proper municipal expenses of the burgh, and to no other purpose.’ It will be noticed that this agreement Act does not touch or affect in any way any of the city funds or property, but the funds and estate proper of the Corporation, that the Workhouse grounds and Mortified and other Poors’ property extant at its date, held by the Council *in trust*, are not affected by it, unless only the fees on entry of burgesses and guild-brethren, which are declared to be always applicable to the ‘proper municipal expenses’ of the burgh, and to no other purpose. If the ‘proper municipal expenses’ of the burgh are the expenses in respect of which King James permitted these fees to be exacted by his decree arbitral,—viz., ‘the support and relief of the failziet and decayet burgesses, merchants, and craftsmen, their wyves, bairns, and auld servants, and uther pure indwellers of the town’—then the Agreement Act in no respect affects the rights of the poor at all. But if by ‘the proper municipal expenses’ is meant the municipal state and pageantry, then the burgess and guildry fees may be written off as a Poors’ asset—the benefit under the Act—with King James’ Royal Malison—going together.

But while the funds held in trust, so far as extant, were not carried by the Act, the Workhouse Managers were creditors of the city for the Mortified money, for which the city was liable under bond and other personal obligation; and hence, the Poor’s Trustees insisted in their claim to be ranked upon the city funds along with other creditors, in respect of these mortifications and dedications, in terms of their claims lodged with the City Trustees, under the Trustees’ Act of 1833. Their claim having been remitted to, and investigated by, the Law and Treasurer’s Committee, these Committees, after sub-committing, returned a report to the Council, which was approved of by the Magistrates and Council on 2d October 1838. The report of the sub-committee (which is signed Robert Johnston, junior, convener of sub-committee) went into a detail of the Workhouse debt—its income and expenditure for the years 1838 and 1839. Exception is taken to the amount of the

income, stated by the Managers, because, 'in consequence of the settlement of the city affairs, several annuities will henceforth be regularly paid on debts to the charity, and ought to be added, as per accompanying report' (which had not been included), 'p. 12 *et seq.*, to £148.' At this time the debt of the charity amounted to £13,678; and exception was taken to the amount, because 'there were several sums now due by the town which may be applied to its reduction, amounting, as per accompanying report, p. 12 *et seq.*, to £311.' These accompanying statements are signed 'Duncan M'Laren, convener,' and are the 'Council's proposed mode of adjusting the principal debts, which they had no doubt would be satisfactory to all the parties interested.' Thus:—

' To twenty-five years' purchase of the annual payment of £200			
' due by the City as at 1st June 1833, in terms of the Trust			
' Act	-	-	£5000 0 0
' Deduct paid on 24th June 1834	-	£200 0 0	
' Less interest from 1st June 1833	-	8 10 0	
		<u>£191 10 0</u>	
' Less repayment on 26th September			
' 1837	-	£15 6 4	
' Off, interest from 24th June 1834	-	1 19 0	
' Leaves	-	13 7 4	
' Leaving thereby to be deducted		<u>178 2 8</u>	
' Nett amount of claim by the Charity Workhouse			4821 17 4
' Principal sum of debt due to the City			£4387 8 8
' Deduct the interest which was paid to Whitsun-			
' day 1834			167 6 4
' Leaves			<u>4220 2 4</u>
' Balance due to the Charity Workhouse			<u>£601 15 0</u>
' Dividends of $13\frac{1}{4}$ per cent., payable thereon, £79 : 14 : 7d., and the annual permanent annuity will be £18 : 1s.'			

In regard to the bonds secured on the Ale Duty in name of the Kirk Treasurer, the Committees beg leave to report as follows:—

' 1. The amount of one bond in name of the Kirk Treasurer is £1116, 13s. 4d., but of this sum £166, 13s. 4d. was mortified for the support of a free school, and £222, 4s. 5d. 4-12ths for distribution by the two senior ministers of Edinburgh.

' The committee recommend that these two sums should be retained by the city, and paid directly to the parties having right thereto, in place of passing through the hands of the treasurer of the Charity Workhouse as heretofore, and that the balance belonging to the other mortifications should be set apart for the Charity Workhouse as follows:—

‘ Amount of the original debt	-	-	-	£1116 13 4
‘ Whereof applicable,—				
‘ 1. For the support of a free school	£166	13	4	} 388 17 9 $\frac{1}{2}$
‘ 2. For distribution by the two senior ministers of Edinburgh	-	-	222 4 5 $\frac{1}{2}$	
‘ Balance applicable to Charity Workhouse			-	<u>727 15 6$\frac{1}{2}$</u>
	Carried forward			<u>£727 15 6$\frac{1}{2}$</u>

	Brought forward,	£727 15 6 $\frac{1}{2}$
' Interest whereon paid to 1st August 1833 is	£6 1 8	
' And payments from Ale Duty valued as at		
' 1st June 1833	- - - 73 11 3 $\frac{9}{12}$	
' Sum of these	- - -	79 12 11 $\frac{9}{12}$
' There remains of reduced capital	- - -	648 2 6 $\frac{1}{2}$
' The dividends set apart, but not paid, are—		
' 1. From Ale Duty	- - - £20 13 9 $\frac{9}{12}$	
' 2. From the ordinary funds of the city	89 13 2	
' Together	- - - £110 6 11 $\frac{9}{12}$	
' Amount required to restore the principal sum as above is		79 12 11 $\frac{9}{12}$
' Which leaves of dividends payable after restoring the prin-		
' cipal sum, £30, 14s.		
Sum of principal	- - -	£727 15 6 $\frac{1}{2}$
' 2. The debt due to the Undertakers of Paul's Work is	£3215 0 0	
' Interest whereon was paid to 1st August		
' 1833	- - - £21 6 11 $\frac{6}{12}$	
' And payment from Ale Duty valued as at		
' 1st June 1833	- - - 268 15 10 $\frac{9}{12}$	
' Sum of these	- - -	290 2 10 $\frac{5}{12}$
' Leaves of reduced capital the sum of		2924 17 1 $\frac{9}{12}$
' The dividends set apart, but not paid, are—		
' 1. From Ale Duty	- - - £73 18 10 $\frac{9}{12}$	
' 2. From the ordinary funds of the city	406 5 9 $\frac{6}{12}$	
' Together	- - - 480 4 8 $\frac{3}{12}$	
' Sum required to restore the principal sum as above is		290 2 10 $\frac{5}{12}$
' Which leaves of dividends payable after restoring the prin-		
' cipal sum, £190, 1s. 10d.		
' Sum of principal	- - -	£3215 0 0
' The result of the accounting, as between the City and Charity Work-		
' house, is, that at present there is due to the Charity Workhouse of interest		
' as at 1st August 1837:—		
' 1. On the sum of £727, 15s. 6 $\frac{1}{2}$ d.	- - -	£30 14 0
' 2. On the sum of £3215 of Paul's Work Mortification		190 1 10
' 3. On the sum of £601, 15s., per minute of 21st Sept. 1838		79 14 7
' 4. For Forglen's Acre	- - -	10 0 0
' Total amount of interest due by the City as at 1st		
August 1838	- - -	£310 10 5
' The future annual payments to be made by the City to the Charity		
' Workhouse will be as follows:—		
' 1. Permanent annuity on £648, 2s. 6 $\frac{1}{2}$ d., at 3 per cent., is	£19 8 10	
' 2. Interest on £79, 12s. 11 $\frac{9}{12}$ d., to be invested at 3 $\frac{1}{2}$ per		
' cent., is	- - -	2 15 6
' These two sums make up the Mortifications payable		
' to the Kirk Treasurer, amounting to £727, 15s. 6 $\frac{1}{2}$ d.		
' 3. Permanent Annuity on the sum of £2924, 17s. 1 $\frac{9}{12}$ d.,		
' at 3 per cent., is	- - -	87 14 10 $\frac{1}{2}$
Carried forward		£109 19 2 $\frac{1}{2}$

	Brought forward,	£109	19	2½
' 4. Interest on £290, 2s. 10½d., to be invested at 3½				
' per cent., is	-	10	3	1
' These two sums make up the debt due to the Undertakers of Paul's Work, amounting to £3215.				
' 5. Permanent Annuity on the balance of £601, 15s., for which a bond will fall to be granted in terms of the Agreement Act, bearing interest at 3 per cent., is		18	1	0
' 6. For Forglen's Acre	-	10	0	0
<hr/>				
' Total amount of future annual payments to be made by the City	-	£148	3	3½
<hr/>				
' All which is humbly reported by				
' DUNCAN McLAREN, <i>Convener.</i>				

This proposed mode of adjusting the principal debts was, as already mentioned, approved of by the Council, on 2d October 1838, and was thereafter printed and issued to the parties interested. The proposed mode of adjusting the principal debts between the charity and city, does not seem to have been accepted when issued, owing, no doubt, to the pecuniary embarrassments in which the affairs of the charity were then placed, but it was ultimately agreed to ; and, as will be seen by and bye, a settlement took place in terms of it, and a mutual discharge was executed giving effect to the transaction.

On 26th December 1839, a sub-committee of Council reported to the Lord Provost's Committee, ' Notes for conferences respecting the annuity, poors' money, &c,' and their report was, on the 31st December thereafter, ' approved of ' by the Lord Provost's Committee, who ' desired it to be printed and circulated among the parties concerned.' In these notes it was proposed to apply to Parliament for a Bill, granting ' powers to the Managers, with concurrence of the Town Council, to sell, or feu, the Charity Workhouse, Bedlam, and Grounds adjacent, in whole, or in part, and to apply the proceeds in purchasing ground and erecting buildings for the poor at another site, any surplus being applied in liquidation of the (Workhouse) debt.'

On 3d February 1840, ' Heads of a Bill,' giving effect to the Council's views, were prepared, and issued to the Charity Managers, and other parties interested. One of these heads was in these words,—and be it enacted, ' That it shall and may be lawful to the Managers of the said Charity Workhouse, by and with the sanction of the Lord Provost, Magistrates, and Council, of the said city (and which sanction they are hereby not only authorised, if they shall judge the same to be expedient, to give, but to grant all necessary conveyances, or other deeds, to purchasers at the expense of the said Managers), to sell and dispose of, either wholly or partially, by feu, or otherwise, the buildings presently occupied as the Charity Workhouse, of the said city, or those occupied as a Bedlam, or as a Children's Hospital, together with the grounds and areas appertaining thereto, and to apply the proceeds towards the purchase of grounds and areas in another situation, and towards the erection and furnishing of the requisite buildings thereon, for the accommodation of the poor of every description ; provided always, that any surplus which may arise from such sales, after providing the requisite accommodation in a new situation, shall be

‘ applied towards the liquidation of the said debt of L.12,754, 12s. 7d.,
‘ and to no other purpose.’

A Bill was accordingly brought in by the Attorney-General, and the late Lord Macaulay, the preamble of which bears that, by virtue of the Scotch Acts, 1579, 1613, 1695, and 1698, ‘ or some of them, the funds
‘ required for the support of the poor in the city of Edinburgh, have
‘ been annually assessed by the Lord Provost and Magistrates and
‘ Council of said city, and raised, levied, and collected from the persons
‘ liable in payment thereof, according to a valuation, and assessment
‘ made by stentmasters appointed by the said Lord Provost, Magis-
‘ trates, and Council;’ and by the 9th clause of the Bill, it is proposed to be enacted, ‘ That it shall and may be lawful to the Managers of the
‘ said Charity Workhouse, by and with the sanction of the Lord Pro-
‘ vost, Magistrates, and Council of the said city (and which sanction
‘ they are hereby not only authorised, if they shall judge the same to be
‘ expedient, to give, but to grant all necessary conveyances, or other
‘ deeds, to purchasers, at the expense of the said Managers), to sell and
‘ dispose of, either wholly or partially, by feu or otherwise, the build-
‘ ings presently occupied as the Charity Workhouse of the said city, or
‘ those occupied as a Bedlam, or as a Children’s Hospital, together with
‘ the grounds and areas appertaining thereto, and to apply the proceeds
‘ towards the purchase of grounds and areas in another situation, and
‘ towards the erection and furnishing of the requisite buildings thereon,
‘ for the accommodation of the poor of every description; provided
‘ always, that any surplus which may arise from such sales, after pro-
‘ viding the requisite accommodation in a new situation, shall be ap-
‘ plied towards the liquidation of the said debt of L.12,754, 12s. 7d.,
‘ and to no other purpose.’

From March to May 1840, sundry conferences were held between the Council and the Charity Managers in reference to the clauses of this bill,—which, if they resulted in anything, resulted in this,—that they widened the existing breach between the parties. The Council insisted on the bill,—the whole bill, and nothing but the bill; while the Workhouse Managers wished a change in the constitution dictated by the Council, and power to assess for any sum required to complete the new buildings contemplated by the Act. Each party communicated their views to the promoters of the bill in Parliament,—the measure seems to have been withdrawn in consequence, and the parties fell back on their previous rights and liabilities. The Managers, on the one hand, held and maintained that the Council were liable in the workhouse debt. The Council, on the other hand, repudiated the workhouse debt. The Managers resolved to resign their offices of managers into the hands of the Council, intimating, on 30th September 1840, to the Lord Provost, that failing the Council providing the necessary funds, 3900 paupers would necessarily be turned out to beg in the city. The same paupers might cause inconvenience to the community, if nothing more; but, said they, there are 100 insane paupers who could not safely be freed from restraint, and the consequences of their being turned out on the community must rest on the Council. The Council sought time for deliberation; and having prepared a case for opinion of counsel, which was submitted to the most eminent counsel then at the bar (the present Lord Justice-General and Alexander Dunlop, Esq.), these lawyers, on 9th October 1840, gave an opinion that the Magistrates

and Council are, by Act of Parliament, the legal administrators for the poor within the city. 'They have certain powers conferred, and certain duties imposed on them by statute, and whatever arrangement they may enter into for conducting the details of management, they cannot free themselves from the legal responsibilities attaching to these powers and duties, which can only be executed by their authority. They have, for the period of a century, devolved the management of the poor on a Board of Managers, who have been allowed by them to administer not merely the specific funds mentioned in the contract of 1740, but the whole assessment and funds applicable to the maintenance of the poor. The constitution of this Board had the sanction and approval of the predecessors of the Memorialists. The Council have always directly nominated from their own body a certain number of its members, and its accounts have been each year submitted to the Council, agreeably to the provision in the contract. It does not appear that the actings of the Board were at any time objected to, as beyond their powers, or their accounts challenged, as shewing expenditure for purposes not warranted by law. In these circumstances, there are good grounds for holding that the Memorialists are bound by the actings of the Managers, and liable to implement the obligations incurred by them in the course of the administration intrusted to them. But, besides, the Managers seem repeatedly to have called on the Memorialists' predecessors (the Town Council) to assess for the deficiency as it arose. This the latter were bound by law to have done; but they refused to do their duty. It is in consequence of this wrongful neglect, or refusal on their part to execute the powers committed to them by statute, and fulfil the duties imposed on them, that the existing debt has been incurred; and if by reason of such refusal or neglect, the means of raising the amount of assessment be now lost, the Managers are not the parties who ought to suffer. We are, therefore, of opinion that the managers, or such of them as may be subjected to the necessity of paying the debts now due, have a claim of relief, which they are entitled to insist for in the same manner as any other creditors of the city.'

On getting the above opinion, the Council remitted the matter to the Law Committee, who sub-committed it. The sub-committee returned a report, which, on 4th January 1841, was approved of, and directed to be laid before the Council. The Council considered that report on 26th January, and approved of the same, and re-committed it to the Law Committee, to confer with the Workhouse Managers for a settlement of the matters raised. In the report so approved of, the Council refer to a minute of a meeting of the Committee of the City Creditors, held on 7th December 1840, in which that committee object to the Workhouse debt (*i.e.*, the £12,754, 12s. 7d.) being ranked on the city funds along with the ordinary city creditors, for the reasons therein stated, and because 'it appears the Charity Workhouse are already ranked as creditors of the city for sums amounting to several thousand pounds, and it appears extraordinary that these sums' (the mortification) 'are not realised and applied in liquidation of the debt. In addition to this fund, there is the property of the Charity Workhouse, of very considerable value, which can be adjudged and sold for the benefit of the (Workhouse) creditors.'

As to these grounds, the report of the Council bears,—'Another

‘question may still be agitated, viz., Whether the heritable property possessed by the Managers, consisting of the buildings of the workhouse and surrounding grounds, could be subjected to the debts? It is understood that there is no direct feudal title to this property in the Managers, but the creditors of the workhouse might endeavour to make the property available, by proceedings against the Town Council, as holding it in trust for the purposes of the charity.’

The report then gives a vidimus of the income, £11,492, 18s. 7d., and expenditure, £10,640, 13s. 6d., for the year to 1st July 1840, adding, ‘Besides the income shewn above, it is mentioned in the printed statement referred to, that the Charity Workhouse has claims against the city for the following annual sums, viz. :—

‘ 1. Annuity from the city of Edinburgh out of its revenue, as provided by the original contract 1740	-	-	-	£200	0	0
‘ 2. Paul’s Work Mortification assigned by the city	-	-	-	128	12	0
‘ 3. Interest on city’s bond to the Kirk Treasurer	£55	16	8			
‘ Less paid the Master of the Free School	-	-	£8	6	8	
‘ And paid the two senior ministers of Edinburgh for necessitous persons	-	11	2	2		
				19	8	10
					36	7 10
‘ 4. Feu-duty on Forglen’s Acres	-	-	-	10	0	0
						£374 19 10

And in the income stated there were these entries .—

‘ From Schaw’s Mortification	-	-	-	£10	0	0
‘ Feu-duty, Paul’s Work	-	-	-	2	15	0

It will be noticed here that the Council do not deny the right of the Charity Managers to the workhouse grounds and mortified moneys, and refer specially to their proposal in 1838, above quoted, for a settlement of the latter; and that the city creditors, while they deny the Workhouse Managers’ right to rank for the £12,754 of debt, admit the workhouse claim to a ranking for the mortified moneys, and that they held the workhouse grounds and buildings in fee-simple. These, the city creditors say, ‘can be adjudged and sold for the benefit of the’ (workhouse) ‘creditors.’ Here, then, the only obstacle to the unconditional surrender made by the Council to the Workhouse Managers of these grounds and buildings in the year 1833, viz., the sanction of the city creditors, is entirely removed.

On 6th March 1841, the Law Committee of the Town Council gave in a revised report. In this revised report the workhouse debts, for which the Lord Justice-General and Mr Dunlop had advised them the Council was liable, are reported to amount to £15,399, 18s. 6d. But against this debt, it appears to the (Council) reporters that there may be placed the amount of certain funds in the hands of the city of Edinburgh, which were mortified substantially for the use and benefit of the poor of the city. These funds, at 1st February 1841, amount to the sum of

£3962 18 8

By another calculation, the Council's committee make the debt						
only	-	-	-	-	-	£13,960 12 8
And they say—						
• Deduct the available funds	-	-	-	-	-	3962 18 8
						<hr/> £9997 14 0

The Council's committee proposes that an Act of Parliament, containing powers to assess for that debt, should be applied for, giving, among other advantages to be gained thereby, that it would 'obtain power to appropriate the mortified sums, amounting to £3962, 18s. 8d.' (of capital), 'in liquidation of the debt—the greater part of which sum, but for that power, it would be impossible so to appropriate.' Accordingly, on 13th July 1841, the Council prepared 'Heads of a bill to provide for the liquidation of the debt'—to repeal the exemptions 'of the future members of the College of Justice and other persons from payment of the annuity and poor's money, and other local taxes.' The preamble was similar to that of the Council's previous 'Heads,' so far as poor's money was concerned; but it narrated also the Annuity Tax Acts, 1661, the Act 1532, establishing the College of Justice, the Act 1661, 'ratifying the privileges of the College of Justice,' the judgment of the Court, 23d February 1687, finding the College of Justice exempt from local taxes, the local Acts extending the royalty of the city, and proceeded—Whereas it is expedient that provision should be made for the payment and liquidation of a certain debt contracted by the Managers of the Charity Workhouse of the city of Edinburgh, by appropriating for that purpose certain funds in the hands of the Lord Provost, Magistrates, and Council of the said city, and by an assessment.' The first clause of the proposed Act is in these words:—Whereas a debt has been incurred by the Managers of the Charity Workhouse, which, exclusive of interest, amounted, at 30th June 1840, to £11,056, 10s. 4d. of principal, and £36, 8s. 10d. of expenses, it shall and may be competent to the Lord Provost, Magistrates, and Council of the city of Edinburgh, in order to liquidate and pay *pro tanto* the foresaid principal sum and expenses, with interest thereof from the periods at which the said debt was contracted, at and after the rate of £3 *per cent. per annum*,—and they are hereby required to dispose of, appropriate, and apply the funds and securities remaining in their hands, specified and contained in Schedule A to this Act annexed.'

The Schedule A therein referred to is as follows:—

'*Funds and Securities* in the hands of the Lord Provost, Magistrates, and Council, to be applied in payment of the debt of the Charity Workhouse of Edinburgh, as at 1st August 1841.

'I. *Of Principal Sums.*

- '1. Balance due to the Charity Workhouse on the accounting with the city for the annual payment of L.200, and the debt due to the city - - - - - £601 15 0
- '2. Balance of a debt of L.1116, 13s. 4d., originally invested in the city's Ale Duty in name of the Kirk Treasurer, and on the expiry of that duty, ranked on the city's ordinary funds, in terms of the act appointing trustees for the City's Creditors - - - - - 605 7 11³/₄

Carried forward £1207 2 11³/₄

	Brought forward	£1207	2	11 $\frac{3}{4}$
‘ 3. Balance of a debt of L.3215, also originally invested				
‘ on the city’s Ale Duty in name of the Undertakers of				
‘ Paul’s Work manufactory, and on the expiry of that				
‘ duty ranked on the ordinary funds of the city, in				
‘ terms of the Trustees’ Act				
	-	-	-	2924 17 1 $\frac{3}{4}$
‘ Sum of principal for which bonds of annuity will				
‘ fall to be issued at 3 per cent., in terms of the				
‘ Agreement Act				
	-	-	-	4132 0 0 $\frac{1}{2}$
‘ II. <i>Of Feu-duty for four years of Forglen’s Park to Whit-</i>				
‘ <i>sunday 1841</i>				
	-	-	-	£40 0 0
‘ III. <i>Of Dividends.</i>				
‘ 1. On the balance of L.601, 15s.,				
‘ as above				
	-	-	-	£79 14 7
2. On the ranking in name of				
‘ the Kirk Treasurer, and				
‘ consigned				
	-	-	-	110 6 11 $\frac{3}{4}$
‘ 3. On the ranking in name of				
‘ the Undertakers of Paul’s				
‘ Work manufactory, and				
‘ consigned				
	-	-	-	480 4 8 $\frac{3}{4}$
Sum				
	-	-	-	670 6 3
‘ Interest, at 3 per cent., from				
‘ 1st Aug. 1830 to 1st Aug.				
‘ 1841				
	-	-	-	60 6 6
				730 12 9
‘ IV. <i>Of Annuities.</i>				
‘ On City Bonds to be issued at 3 per cent.,				
‘ for L.4132, from 1st August 1838 to 1st				
‘ August 1841				
	-	-	-	371 17 6
‘ Sum of these				
	-	-	-	1142 10 3
‘ Total funds to be applied in extinction of the debt				
				£5274 10 3 $\frac{1}{2}$

It does not appear that any progress was made with this proposed Act. Certainly no law in terms of it was passed. On 30th July 1841, however, the matter of the workhouse claims was considered in the Treasurer’s Committee of the Council, and the minute of that committee bears that ‘it was reported that, in terms of the remit contained in the minute of 16th current, the accountant had prepared a state of the account between the city and the Charity Workhouse, relative to the annual payment of £200 due by the city under the contract of 1740, and the debt due by the workhouse to the city. From this state, which was laid before the committee, it appeared that, valuing the annuity at twenty-five years’ purchase, as at 1st June 1833, the date of the City’s Trust Act, and dealing with it, in reference to the subsequent payments, like any other debt of the city, the claim amounted, at the above date, to £4821 17 4

From which there fell to be deducted the principal debt due by the workhouse to the city, discounting the interest, which was paid to Whitsunday 1834, 4220 2 4

Leaving a balance due to the workhouse at 1st June 1833, £601 15 0

‘It was further reported that the said state having been communicated to the Committee of the City’s Creditors, their clerk had intimated that, on 12th November 1838, the committee had approved of the arrangement then proposed, and which was exactly the same with that now contemplated.

‘If, therefore, the Managers of the Charity Workhouse shall also signify their approval, there appears to be nothing to prevent the Town Council from directing their accountant to prepare for signature bonds of annuity under the City Agreement Act corresponding to the above ranking,—the bonds being restricted to L.600 nett, and the balance of L.1, 15s. being paid in cash, along with the sum of L.91, 0s. 8d. of dividends and bank interest thereon, due under this ranking between 1st June 1833 and 1st August 1838. Provided that, before issuing the bonds, and paying the cash balance and dividends, the arrestments at the instance of the creditors of the workhouse shall be withdrawn.

‘The attention of the committee was called to the sum of L.605, 7s. 11 $\frac{3}{4}$ d., ranked as a debt against the city in name of the Kirk Treasurer, and to another sum of L.2924, 17s. 1 $\frac{9}{16}$ d., ranked in name of the undertakers of Paul’s Work, and it was stated that bonds corresponding to L.600 of the first mentioned debt, and to L.2920 of the second, had been prepared after the passing of the Agreement Act, and were still in the city’s possession, neither these nor the coupons having been issued in consequence of the arrestments referred to. It was explained that the original capital of these two debts had been L.727, 15s. 6 $\frac{3}{4}$ d. and L.3215 respectively, and that their amount had been reduced to the sums ranked, by reason of the payments made on account thereof from the Ale Duty, which, when the Ale Duty ceased, and its debts were added to the common debts of the city, were imputed *pro tanto* of the capital. It was stated that of these Ale Duty payments there remained in the hands of the city L.105, 12s. 5 $\frac{3}{4}$ d. (bank interest included), which was not paid at the time by reason of the arrestments; and that the original capital of various sums mortified in the hands of the city had been restored after the Agreement Act, but it did not appear to the committee to be necessary to do so, in the case of the two debts now under consideration, to a greater extent than the above L.105, 12s. 5 $\frac{3}{4}$ d., which must be considered as capital, and dealt with accordingly.

‘The accountant submitted to the committee a note, shewing the payments which will fall to be made to the managers of the workhouse, if they shall agree to the proposed settlement, and the arrestments shall be withdrawn.

‘These are :—

‘1. The fractional part of the debt of L.601, 15s.,	£1 15 0
‘2. The dividends and bank interest mentioned above,	91 0 8
‘3. Certain dividends from the city’s funds accruing at and prior to 1st August 1838 on the debts of L.605, 7s. 11 $\frac{3}{4}$ d. and L.2924, 17s. 1 $\frac{9}{16}$ d. consigned in the Bank of Scotland after the passing of the Agreement Act, also by reason of the arrestments,	530 10 4 $\frac{3}{4}$
‘4. Three years’ coupons or annuities, from 1st August 1838	

Carried forward

£623 6 0 $\frac{3}{4}$

	Brought forward	£623	6	0 $\frac{3}{12}$
' to 1st August 1841, on the bonds for the sums of L.600 and				
' L.2920 respectively,		370	16	0
' 5. Four years to Whitsunday 1841 of the feu-duty payable				
' by the city for Forglen's acres,		40	0	0
	Total,	£1034	2	0 $\frac{3}{12}$

'The Committee direct a copy of this minute to be transmitted to the Managers of the Charity Workhouse, and that they be informed, that if they shall procure the consent of their creditors to the withdrawal of the arrestments, there will be delivered to them the bonds of annuity corresponding to the L.600 first before referred to, and payment made of the sum of L.1034, 2s. 0 $\frac{3}{12}$ d. above detailed, in order that the latter sum, and the value of these bonds when converted into cash, may be applied in reducing the amount of debt due by the workhouse. Provided always, that a mutual discharge shall be executed between the city and charity workhouse of their respective claims.

'With regard to the fractional parts of the debts of L.605, 7s. 11 $\frac{2}{12}$ d. and L.2924, 17s. 1 $\frac{9}{12}$ d., to the bonds of annuity corresponding to the sums of L.600 and L.2920, and to the sum of L.105, 12s. 5 $\frac{3}{12}$ d. of payments from the Ale Duty to account of the original capital of these debts, the committee conceive, that as these are moneys mortified for special purposes, to the annual produce of which alone the managers have right under the contract of 1740, it is the duty of the Magistrates to retain the bonds in their own hands, to invest the fractional parts of the debts, and the foresaid sum from the Ale Duty, and to pay over the proceeds to the workhouse half-yearly as they shall arise.

This proposal of 30th July 1841 having been approved of by the Council, and communicated, along with the relative states made up by the city's accountant, to the Charity Managers, was accepted by the Workhouse Managers, who, on 2d June 1842, approved of the draft discharge, and authorised the Chairman of the Finance Committee to sign it in behalf of the Managers. The states so communicated were these :—

'I. State of the Settlement between the City of Edinburgh and the Managers of the Edinburgh Charity Workhouse, for the Annual payment of L.200 due by the City, and the principal sum of L.4387, 8s. 8d. sterling, due by the Workhouse to the City, as at 1st June 1833. Per Act of Council 2d October 1838.

' To 25 years' purchase of the annual payment of £200 due by the city as at 1st June 1833, in terms of the Trust Act,		£5000	0	0
' ... Deduct paid on 24th June 1834,	£200	0	0	
' ... Less interest from 1st June 1833,	8	10	0	
' Remains,	£191	10	0	
' ... Less repayment on 26th Sept. 1837,	£15	6	4	
' ... „ off interest from 24th June 1834,	1	19	0	
' Remains,	13	7	4	
' Leaving thereby to be deducted,		178	2	8
' Amount of claim by the Workhouse at 1st June 1833,		£4821	17	4
' By the principal sum of debt due to the city of Edinburgh,	£4387	8	8	
Carried forward	£4387	8	8	£4821 17 4

	Brought forward,	£4387 8 8	£4821 17 4
' By deduct the interest thereon, which was paid to			
' Whitsunday 1834,		167 6 4	
	' Remains,		4220 2 4
' Leaving of Balance due to the Workhouse at 1st June 1833,			601 15 0
' The dividends whereon are—			
' Bank Interest.			
1835, May 12.	' First dividend at $4\frac{1}{2}$ per cent.	£27 1 7	
	' Interest to 23d Dec. 1835, at 2		
	' per cent.	£0 6 8	
1835, Dec. 23.	' Second dividend at 3 per cent.	18 1 0	
		45 2 7	
	' Interest to 1st Dec. 1836, at		
	' 2 per cent., and to 21st		
	' Dec. 1836, at 3 per cent.	6 18 6	
1836, Dec. 21.	' Third dividend, at $3\frac{1}{2}$ per cent.	21 1 3	
		65 3 10	
	' Interest to 12th Feb. 1838, at		
	' 3 per cent., and to 25th		
	' April 1838, at $2\frac{1}{2}$ per cent.	2 11 10	
1838, April 25.	' Fourth dividend, at $\frac{3}{4}$ per cent.	4 10 3	
		70 14 1	
	' Interest to 11th June 1838,		
	' at $2\frac{1}{2}$ per cent., to 1st Aug.		
	' 1838, at 2 per cent.	0 8 5	
1838, Aug. 1.	' Fifth dividend at $1\frac{1}{2}$ per cent.	9 0 6	
		79 14 7	
	' Interest,	4 5 5	
	' Sum of these,	84 0 0	
' Bank Interest whereon is—			
' From 1st August 1838 to 1st June 1839, at			
' 2 per cent.	£1 8 0		
„ ' 1st June 1839 to 5th March 1841, at			
' 3 per cent.	4 8 8		
„ ' 5th March 1841 to 1st August 1841,			
' at $3\frac{1}{2}$ per cent.	1 4 0		
	Sum,	7 0 8	
' Sum of Dividends and Interest on the above ranking,		91 0 8	
' Sum Balance due to the Workhouse for which bonds			
' fall to be granted,			£601 15 0
' H. G., Accountant.'			

' II. Note of Cash Payments to be made on the part of the City to the
' Managers of the Edinburgh Charity Workhouse, in the contem-
' plated Settlement of Accounts, on 1st August 1841, on the Arrest-
' ments being withdrawn.

	' Payable by the ' Bank on ' Mr Douglass's ' Order.	Payable by the City Chamberlain.
' (1.) Fractional parts of debts—		
' 1. On the sum of £601, 15s., the balance of		£1 15 0
' new ranking,		
' 2. On the sum of £605, 7s. 11 $\frac{1}{2}$ d., the re-		5 7 11 $\frac{1}{2}$
' duced capital of the kirk treasurer's ranking,		
' 3. On the sum of £2924, 17s. 1 $\frac{1}{2}$ d., the re-		
Carried forward,	£	£7 2 11 $\frac{1}{2}$

	Brought forward	£7 2 11 $\frac{1}{2}$
'duced capital of the ranking in name of		
' Paul's Work Mortification,		4 17 1 $\frac{9}{12}$
	Sum,	12 0 0 $\frac{11}{12}$
'(2). <i>Dividends, per Schemes, with Interest—</i>		
' 1. On the sum of £601, 15s., with bank interest to 1st August 1841,		91 0 8
' 2. On the sum of, £727, 15s. 6 $\frac{1}{2}$ d. from Ale-duty, ditto, ditto,		23 5 11 $\frac{6}{12}$
' 3. On the sum of £3215, ditto, ditto,		82 6 5 $\frac{10}{12}$
' 4. On the sum of £605, 7s. 11 $\frac{3}{4}$ d., from City Funds, ditto, ditto,	£90 19 2 $\frac{9}{12}$	
' 5. On the sum of £2924, 17s. 1 $\frac{9}{12}$ d., ditto, ditto,	439 11 1 $\frac{6}{12}$	
(3). <i>Four Years' Feu-duty of Forgiven's Acres,</i>		40 0 0
' Sum payable by the City Chamberlain,		248 13 2 $\frac{2}{12}$
' Sum payable by the Bank of Scotland per Mr Douglass's order,		530 10 4 $\frac{3}{12}$
	Sum,	£779 3 6 $\frac{5}{12}$
' (4). <i>Three years' Coupons payable by the Bank on £4120,</i>		370 16 0
	Total,	1149 19 6 $\frac{1}{12}$
' III. <i>Note of the Reduction which has been made upon the original Sums ranked in the name of the Kirk Treasurer, and Paul's Work Mortification.</i>		
	' Principal Sums.	Reductions.
1. ' Upon the Kirk Treasurer's Ranking—		
' Principal sum,	£1116 13 4	
' Off for M'Lurg's Mortification,	£166 13 4	
' ... Hair's Mortification,	222 4 5 $\frac{1}{12}$	
' Deduct,	388 17 9 $\frac{1}{12}$	
' Remains,	727 15 6 $\frac{1}{12}$	
' The interest on £1116, 13s. 4d., having been paid to 1st August 1833, there was abated from the principal to equalize it, as at 1st June 1833, the sum of,	9 5 1	9 5 1
' When the Ale-duty ceased, and the debt fell to be ranked upon the City's ordinary funds, those payments which were made from the Ale-duty, subsequent to 1st June 1833, were deducted from the principal,	113 2 6 $\frac{1}{12}$	113 2 6 $\frac{1}{12}$
' Deduct,	122 7 7 $\frac{6}{12}$	
' Remains,	605 7 11 $\frac{2}{12}$	
' To be settled thus—		
' By Six Annuity Bonds at £3 each, £600 0 0		
' By cash,	5 7 11 $\frac{2}{12}$	
' Sum,	605 7 11 $\frac{2}{12}$	
2. ' Upon Paul's Work Mortification—		
' Principal sum,	3215 0 0	
' The interest having been paid to 1st August 1833, there was abated from the principal to equalize it, as at 1st June 1833, the sum of	21 6 11 $\frac{1}{12}$	21 6 11 $\frac{1}{12}$
Carried forward	£21 6 11 $\frac{1}{12}$	£3215 0 0 £143 14 7
	E	

Brought forward	£21	6	11 $\frac{0}{2}$	£3215	0	0	£143	14	7
' And of payments from the Alo ' duty,		268	15	10 $\frac{0}{2}$			268	15	10 $\frac{0}{2}$
' Deduct,				290	2	10 $\frac{3}{2}$			
' Remains,				2924	17	1 $\frac{0}{2}$			
' To be settled thus—									
' By twenty - eight Annuity ' Bonds at £3 each,	2800	0	0						
' By 1 Annuity Bond at £3, 12s.	120	0	0						
' By cash,	4	17	1 $\frac{0}{2}$						
Sum,				2924	17	1 $\frac{0}{2}$			
' Sum required to restore the above debts to the ' original amount,							412	10	5 $\frac{9}{2}$

*' IV. Note of the Result in the event of the City's finding it imperative
' on them to restore the principal Sums to their original amount,
' and resolving to do so from the funds still in their own hands.*

' The amount of cash payments as on page 1,				£1149	19	6 $\frac{6}{2}$
' Deduct—						
' 1. Fractional parts of the two debts on preceding ' page,	£10	5	0 $\frac{11}{2}$			
' 2. Sum required to restore the capital of these debts	412	10	5 $\frac{9}{2}$			
' Deduct,				422	15	6 $\frac{8}{2}$
' Remains of available cash payments,				£727	3	11 $\frac{0}{2}$

' Edinburgh, 27th July 1841.

' HENRY GARDNER, Accountant.'

On 28th June 1842, the Charity Managers and the City settled accounts to that date, in terms of the accepted proposal, the Managers receiving from the City six bonds of L.100 each					£600	0	0	
Cash	.	.	.	.		1	15	0
Dividends	.	.	.	.	£91	0	8	
Interest to date	.	.	.	.	2	12	9	
					<hr/>			
						93	13	5
						<hr/>		
					£695	8	5	

and granting a mutual discharge, by which the Workhouse Managers discharged the city of the annuity per £200, and of the sum and bonds received, *but nothing else*; and, on the other hand, the Council discharged the Charity Managers of the debt due to them for compensation paid to St Cuthbert's parish under the Royalty Extension Acts, and in this discharge the city creditors joined.

On same 28th June 1842, the city, in farther implement of said accepted proposal, paid to the charity Managers, on their receipt, the dividends due on the mortified moneys before-specified, with interest to date of settlement, and five years' arrears of feu-duty due by them for Forglen's Acre. This settled up the revenue to that date, leaving due, *Capital Sums* 'invested on behalf of the Edinburgh Cha-

' rity Workhouse in city bonds for Paul's Work ' Mortification'	£2920	0	0
Mortification per ranking for the Kirk Treasurer	600	0	0
For behoof of Charity Workhouse	200	0	0
Total Capital	£3720	0	0

' Yielding an annual revenue of	-	-	-	£111	12	0
' Payable, half-yearly, on February and	August, and Feu-					
' duty, Forglen's Aere, payable at Whitsunday,	-			10	0	0
' Making the total annual revenue				£121	12	0'

On this same 28th June 1842, the Council—having, as already mentioned, got the joint opinion of the present Lord Justice-General and Mr Dunlop, that the city was liable to maintain the poor, provide the funds, and make good the Workhouse debt—assumed their proper position, by reporting, 'that it is undeniable that, by the common law of the land, it is with the magistrates alone that the whole power of administration rests, and all acts relative to the poor must proceed on their authority.' Exercising that authority, the Treasurer's Committee reported—'by unanimously recommending to the Magistrates and Council, as the legal guardians of the poor of the burgh, to ORDER AND DIRECT the Managers of the Workhouse to do that which they have already intimated to them it is their desire should be done'—viz., to transfer the whole pauper lunatics of the city to Morningside. And the Magistrates and Council 'ordered and directed in terms of the recommendation therein contained.'

On the 11th October 1842, the Treasurer's Committee review the Workhouse estimates for the then current year, and remark thereon,—objecting thereto, as there 'were excluded from their estimate for the current year the revenue derivable to the Workhouse from the settlement of those (the city's) accounts,' amounting to L.121, 12s. *per annum in perpetuity*;—being, as above stated,—

Revenue from Paul's Work, &c.,	.	.	.	£111	12	0
Feu-duty, Forglen's Aere,	.	.	.	10	0	0
				£121	12	0

The Magistrates and Council approved of the report, and directed copies of it to be transmitted to the Managers of the Charity Workhouse, and thereby, as in the many instances previously adverted to, the Council distinctly admitted the right of the Workhouse Managers, as then representing the poor, to the produce of the mortified moneys '*in perpetuity*.'

In the years 1842–43, Forrest Road was formed through the Workhouse grounds by arrangement between the Council, the public, the Charity Managers, and the Road Trustees. The substance of that arrangement was this,—all right to the ground on which the road was formed was surrendered and abandoned of consent of all these parties, *excepting the Workhouse Managers*, who reserved right 'to resume the same at any time they may think proper, unless a purchase be afterwards effected thereof.' This reservation was assented to by all the other parties to the arrangement; and here, again, *the right to the Workhouse Grounds in the Workhouse Managers was admitted* on the part of the Council, the public, and the Road Trustees.

The contention between the Council and the Workhouse Managers continuing, the Council seems in 1843 to have resolved upon resorting to law to settle their differences. The Council had already been advised by the highest legal authority, short of judgment of the Court, that the Council was bound to maintain the poor, and to raise all the funds

necessary for that purpose, and for the purpose of paying the Workhouse debts,—the debt and obligations being entirely the Council's,—while the Workhouse Managers were merely the hands of the Council in dividing such sums of money as the Council placed into them. The Council, making the most of their position, applied again to the same learned counsel for opinion on a long case, and were advised on 20th October 1842, 'that the contract of 1740, by which the then Magistrates agreed to devolve permanently and absolutely the administration of the poor, with which they were by public statutes invested, on other parties, was illegal, and *ultra vires*, and that it could not of itself be binding on their successors;' . . . 'that the Memorialists may resile from it, more particularly if they can obtain the concurrence of the Kirk-Sessions, who are the only other contracting parties under the original agreement;' . . . 'that the Memorialists are entitled to resume possession of the Workhouse, and to supersede the present Managers; but we do not think that it would be advisable for them to attempt to do so at their own hand, and without having their right declared by a court of law;' . . . and that 'the proper course for the Memorialists to follow, would be to raise an action of declarator to have it declared that the contract of 1740 was illegal, and *ultra vires*, and not binding on the present or future Councils; and that the Memorialists are entitled to resume the administration of the poor and poor's funds, to be conducted by them *according to the ordinary rules of law applicable to Royal Burghs*.'

Following up this opinion, the Council, on 17th April 1843, brought a Summons of Reduction and Declarator at their instance against the Workhouse Managers, in which they averred the Acts of Parliament under which they were liable to maintain the poor,—narrated the contract of 23d February 1740,—averred, 'that since the date of the said contract the management and direction of the funds, levied and appropriated for the support and maintenance of the poor within the burgh, has been assumed and exercised by the Managers of the Edinburgh Charity Workhouse: That soon after the said agreement was entered into, a large hospital or workhouse was erected or provided, wherein a number of the poor of the burgh have been, and now are, maintained and supported: That the said Managers and Directors of the said Charity Workhouse, have annually required the pursuers and their predecessors in office, to supply them with the funds alleged by them to be requisite to enable them to discharge the duty imposed on them by the foresaid contract; and the Magistrates and Council have been in the practice for many years of authorizing assessments on the inhabitants of the city, the amount of which has been levied for and paid to the Treasurer in office for the time of the said workhouse: That the pursuers have been advised that it was and is illegal, and *ultra vires*, of the pursuers and of their predecessors to devolve permanently the administration of the poor on other parties, and that it is their duty to resume the exercise of the powers which statute has conferred upon them, and of the duties by the same authority imposed upon them, and to conduct the administration of the poor and poor's funds according to the ordinary rules of law applicable to Royal Burghs: That the pursuers have accordingly, and for various other reasons, resolved to abandon the arrangements adopted by the foresaid contract, and to act in conformity with the legal obligations and duties so incumbent

‘on them; and they have desired and required the Managers and Directors of the foresaid Charity Workhouse, defenders, to cease from interfering with the management and administration of the poor and poor’s funds, and to surrender to the pursuers the foresaid Charity Workhouse and buildings connected therewith.’ Upon these averments the Council calls for production of the contract of 23d February 1740, that it may be reduced, because ‘it was *ultra vires* of the Magistrates and Town Council of the city, by whom the said contract was entered into, to enter into and execute the same, so as to denude themselves or their successors in office of the powers and administration vested in them by statute, and permanently transfer the said administration to other parties, or limit or fetter themselves and their successors in the exercise of their statutory duties, in reference to the maintenance of the poor, and it is not obligatory on the present pursuers or their successors in office;’ and—for the reason stated—concluding, ‘that it *Ought and Should be Found and Declared*, by decree foresaid, that the pursuers, and their successors in office, have the sole and only right to manage and administer the poor and *poor’s funds of the city*, and that they *are bound to manage and administer the same accordingly*, and notwithstanding of the foresaid contract, or of anything that may have followed thereon; and that the pursuers, and their successors in office, have the sole and only right to have and to hold the said workhouse, and whole buildings and grounds therewith connected, and are entitled to resume the possession thereof, and to use the same,—*for the benefit of the poor of the city.*’

On 6th June 1843, decree in absence was pronounced, in terms of the conclusions of the summons, against the defenders, the Charity Managers; but it was afterwards recalled of consent. In the meantime, the Council prepared another ‘draft of a bill for providing for the liquidation of the debt owing by the Charity Workhouse Managers.’ On 27th November the Workhouse Managers appointed a committee to confer with the Council on the draft. On 15th December 1843, a conference was held—the Managers denying all liability for the debt—and the Council, notwithstanding the opinion they had received, repudiating it as a debt against the city’s funds, little good was gained by it. The Treasurer’s Committee, however, before the conference broke up, explained that if the bill shall pass, an arrangement proposed at the meeting might be carried into effect, by the parties giving in a joint-minute to the Court, by which, on the one hand, the Council should engage to relieve the managers of all obligations, pecuniary or otherwise, incumbent on them as such; and, on the other hand, the Managers would consent to a decree in favour of the city being pronounced by the Court.

On 22d December 1843, the Managers resolved that on the bill passing, and their relief being secured, they would recommend their constituents to consent to decree. On 28th December, the Treasurer’s Committee insisted on a formal minute being signed in terms of the minute of conference; and, on 9th January 1844, the General Managers authorized their Treasurer to sign the minute of conference, and this seems to have satisfied all parties for the time.

The bill referred to in this conference, so promoted by the Council, and sanctioned by the Managers, was passed into an Act, 7 Victoria 1844. It narrates the fact in the preamble, that ‘the funds required for the

‘relief of the poor of the City of Edinburgh, have been annually assessed by the Lord Provost, Magistrates, and Council of the said city, and raised, levied, and collected from the persons liable in the payment thereof, according to a valuation and assessment made by stentmasters, appointed by the said Lord Provost, Magistrates, and Council.’

‘And whereas, from the prevalence of cholera at one period, and of occasional epidemic disease, and from the increasing number of the poor of the said city, debts to a considerable amount have been incurred by the Managers of the Charity Workhouse of the said city, and which debts the funds applicable to the relief of the poor of the said city are inadequate to pay,’ it is enacted, that the debts, amounting to L.13,920, 10s. 2d., should be paid by assessment as therein mentioned. But, ‘that nothing herein contained shall take away or abridge the rights or authorities, vested by the law of Scotland in the Magistrates of the said city, or in the Lord Provost, Magistrates, and Council thereof, with regard to the care, direction, and management of the poor, or the execution of the laws applicable to vagrants or paupers, and impotent and disabled persons—which rights or authorities are hereby reserved entire.’ Having obtained that Act, by which provision was made for payment of the debt by assessment, a joint minute was given into the process, stating the passing of the Act, and consenting to decree in favour of the pursuers, on the distinct condition, ‘that the pursuers shall relieve the defenders and their predecessors in office of all obligations, pecuniary or otherwise, incumbent on them, as Managers of the Charity Workhouse;’ and the Court accordingly, on 25th May 1844, *reduced* ‘a contract of agreement, bearing date the 23d day of February 1740, entered into by the pursuers’ predecessors then in office, and certain parties therein named, as having full power and authority from the respective Kirk Sessions within the Burgh of Edinburgh of the tenor libelled, or of whatever other date, tenor, or contents the same may be; and *decerned* and *declared*, ‘and hereby *decern* and *declare*, the same, with all that has followed, or is competent to follow thereon, to have been from the beginning, to be now, and in all time coming, void and null, and of no avail, force, strength, or effect,—and to bear no faith, judicially or extrajudicially: And, further, FOUND and DECLARED, and hereby FIND and DECLARE, ‘that the pursuers, and their successors in office, have the sole and only right to manage and administer the poor and poor’s fund of the city; and that they are bound to manage and administer the same accordingly, and that notwithstanding of the foresaid contract, or of anything that may have followed thereon; and the pursuers, and their successors in office, have the sole and only right to have and to hold the said workhouse, and whole buildings and grounds therewith connected—and are entitled to resume the possession thereof, and to use the same —FOR THE BENEFIT OF THE POOR OF THE CITY.’

It will be noticed here, that nothing but the contract of 23d February 1740 is reduced,—that the grant and appropriation of the Poor’s-house Grounds, 11th June 1740, *is not reduced*. But it is declared that the pursuers ‘have the sole and only right to have and to hold the said workhouse, and whole buildings and grounds therewith connected—and are entitled to resume possession thereof, and to use the same,—‘for the benefit of the poor of the city.’ This decree, therefore, while it reinstates the Council in their proper position of legal administrators of

the poors' funds, as well as legally bound to provide the necessary funds so to be administered, is *res judicata* against the Council; that the Poor-house Grounds, and buildings thereon, are only held by them *for the benefit of the poor of the city*. The decree was taken of consent. The original grant of the ground on 11th June 1740 is not affected by it. But with the consent and at the instance of the Council, the Court declares that these grounds were held by the Council—not for the benefit of the city, but for the benefit of the poor of the city, and that unconditionally. The decree transferred the admitted grant for the use of the poor, from improper and illegal trustees, to the proper and legal poors' administrators. But it went farther. The decree fixed indelibly and unconditionally that the trust, whatever it may have been in the past, was then and thereafter 'for the benefit of the poor of the city,'—and hence a poors' trust,—the poor being sole and unconditional beneficiaries under it.

So standing the declared title to the Poor-house Grounds and Buildings, the Council on 3d June 1845, within two months of the passing of the Poor Law Amendment Act, exposed to public roup a part of the Poor-house grounds, and feued the same to the Trustees of the Free North Church, for payment of a feu-duty or ground annual of L.35, as aftermentioned. The transaction was not, however, completed till after the passing of the Poor Law Amendment Act. That Act, as will afterwards be seen, transferred the Poor-house Grounds and Buildings from the Council to, and vested them in, the Parochial Board. But notwithstanding this, the Council in 1850 completed the transaction with the Free North Church, by executing the feu disposition after narrated. This, however, falls within the

III. *Period,—from the passing of the Poor Law Amendment Act to the date of the present remit.*

The Poor Law Amendment Act was passed on 4th August 1845. By the 52d sec. of that Act, it is provided, 'that where any *property whatsoever*, whether heritable or moveable, or any *revenues*, shall, at the time of the passing of this Act, belong to, or be vested in,' 'the *magistrates and town council of any burgh, or commissioners, trustees, or other persons, on behalf of*' 'the magistrates and town council, under any act of Parliament, or under *any law or usage, or in virtue of gift, grant, bequest, or otherwise*, for the use or benefit of the poor of such parish or burgh, it shall, from and after a time to be fixed by the Board of Supervision, be lawful for the parochial board of each such parish,' 'to receive and administer such property and revenues, and the right thereto shall be vested in such parochial board; and the town council, commissioners, trustees, or other persons, are hereby authorised and required, either to continue to hold all such property and revenues for the behoof of such parochial board, or to make, grant, subscribe, and deliver such dispositions, assignations, and conveyances of all such property and revenues, as may be necessary to enable such parochial board to administer the same, for behoof of the poor of such parish.'

The Board of Supervision fixed that the time at which the property of the old board became the property of the new, was the day of election of the first board under the Act.

The question what property was transferred from the old board—ex-

tinguished by the Act—to the new board created under it, will afterwards be considered. In the meantime the chronological narrative will be continued.

From the institution of the Charity Workhouse, down to the term of Lammas 1851—that is for 105 years before the passing of the Poor Law Amendment Act, and for *six years thereafter*—the Council paid the annual revenue from Paul's Work, and other mortifications, to the Charity Managers and their successors,—being the Council themselves from the date of their decree till August 1845, and the Parochial Board thereafter; and that revenue was annually applied, along with the other poors' funds raised by assessment and otherwise, to, and for the use of, the city common poor. But in the year 1851 or 1852, as appears from the published accounts of the Parochial Board, the Council declined paying any farther revenue from these sources to the board. A note in the published accounts bears—'The Town Council have declined to pay further dividends, or other items accruing from the mortification (Paul's Work), but their right to withhold payment is at present under consideration.' The last payment received was dividend on City Bond for half-year ending Lammas 1851, L.43, 16s.

From 1740 downwards, the poors' administrators for the time occupied, and now occupy, the Poor's-house Grounds and Buildings for the use and benefit of the poor. These have passed with every change in the administration, and at the passing of the Act 1845 were vested in the city, for the benefit of the poor of the City Parish,—and by virtue of that Act, if poors' funds proper, are now vested in the Parochial Board.

On 15th, 16th, and 17th October 1850, however, the Council, in alleged implement of the articles of roup of 3d June 1845, executed a disposition by the Council—not as poors' trustees, which the Council was at the date of the exposure, but as a corporation—in favour of certain trustees for behoof of the Free North Church, by which the Council, in consideration of a ground rent of L.35 per annum, from Martinmas 1845, payable to the Council as a corporation, let to these trustees 732 square yards, or thereby, of the Poor-house grounds, then held by the Council, under decree of declarator of the Court of Session, for 'the benefit of the poor of the city,' and hence at that time, by the operation of the Poor Law Amendment Act, transferred to and vested in the Parochial Board, and that without asking the consent of the Court, or any person then representing the poor. On this disposition the disponees were infeft on 10th December 1856, and the feuars have held the ground so disposed, paying the ground annual contracted therefor to the Council as a corporation from 1845 till present date.

This breach by the trustees of a poors' trust—declared by decree of the Supreme Court, obtained at the Council's own instance—who, at the time of the exposure, were sole poors' trustees—having in 1857 been formally brought under the notice of the Parochial Board, the Board remitted to a Special Committee to enquire into the legality of this sale by the city of ground belonging to the poor.

On 1st October 1857 the committee, consisting of Mr John Forrester, W.S., Mr Beatson Bell, W.S., and Mr Law, then chairman of the Board, 'having considered the whole subject of the remit,' reported their 'unanimous opinion that the disposition granted by the Council to the Free North Church Trustees of part of the Poor-house grounds

‘ was *ultra vires* of the said Provost and Town Council, and an unwar-
 ‘ ranted infringement of the rights and interests of the managers of the
 ‘ poor, and that the said two areas of ground remain, and still are, the
 ‘ property of the Parochial Board of Edinburgh, in the same way and
 ‘ sense as the Poor-house, and other buildings and surrounding enclosures,
 ‘ are the property of the said Parochial Board.’ The Law Committee
 of the Board, on 1st October 1857, ‘ after due consideration, approve of
 ‘ and adopt the said report, and report the same *simpliciter* to this
 ‘ Board ;’ and on 2d October 1857 the then General Board, at their
 ordinary monthly meeting, approved of the report—agreed to print the
 same, and relative documents, and furnish the Council with copies, along
 with a communication ‘ prepared at the sight of Messrs Forrester,
 ‘ Beatson Bell, Cairns, and Shand.’ And accordingly, on 24th October
 1857, a communication was sent to the City Clerks with a copy of the
 report. In the letter accompanying said report, it was stated, ‘ The
 ‘ Managers for the poor are willing to believe that the foresaid disposi-
 ‘ tion must have been granted in error, seeing the Managers of the poor
 ‘ have been in possession of the ground, under the *grant*, for considerably
 ‘ upwards of a 100 years ; and they trust that it was only necessary to
 ‘ call the attention of his Lordship, and Magistrates and Council, to the
 ‘ facts above stated, to induce them to restore the property, or at least
 ‘ make compensation to the Managers of the Poor for the value of it.’
 The Council, however, maintained a right to dispose of the grounds as
 they did, and denied all right in the Board to compensation ; and with
 a very commendable but apparently vain anxiety to avoid litigation
 with the Council, the Board have permitted matters, from year to year,
 to remain on the footing of the correspondence. The folly of farther
 delay being apparent to the present Board, they included this question
 in the prefixed remit, in order that all questions between the two public
 trusts—the City Council on the one hand, and the City Parochial Board
 on the other—may now be brought to a settlement ; whether judicially
 or extrajudicially, seems to be very much in the power of the Council.

Having thus reported on the history and facts bearing more especially
 on the questions raised in the Remit, the Reporter will now direct at-
 tention to

IV. *The legal principle which regulates the Residuary Succession from the Old Poor's Administrators (the Council) to the New Administrators (the Parochial Board).*

The 56th section of the Poor Law Amendment Act *per expressum*

Transfers	From the Council to the Parochial Board,	1. All heritable property, 2. All moveable property, 3. All revenues,	Belonging to or vested in	1. The Magistrates 2. The Magistrates and Council, 3. Commissioners 4. Trustees, 5. Other persons,	Under or in virtue of	1. Any Act of Parliament, 2. Any law, 3. Any usage, 4. Any gift, 5. Any grant, 6. Any bequest, or 7. Otherwise,	For the use or benefit of the poor of the parish.
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For instance, admitting that the Council, the old Poor Law Administrators, held purely and exclusively for the use or benefit of the Poor of the parish, the Poor's-house Grounds, and an admitted balance of Poor's Assessments, on the passing of the act, section 56 of it would

Transfer	From the Council to the Board	1. The Poor-house Grounds, 2. Balance of Poor Assessments,	As belonging to and vested in	The Magistrates and Council (the old body)	Under and in virtue of	1. The feudal title followed by grant 1740,—usage for 105 years,—and Decree of Declarator of Court, 2. The Stent Act,	For the use and benefit of the Poor of the Parish,
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as poor's funds proper, which, by the Act, pass from the old and extinguished body of administrators, to the new administrators succeeding them, created by the Act of Parliament.

The Parochial Board comes in place of the Council; and, as their residuary beneficiaries, acquires right to all property and funds whatever, however vested or held, which at the time of the passing of the Act was held 'for the use or benefit of the poor of the parish.' The new Board, under the Act, takes the place of the administrators under the old law, and the Act transfers all unexhausted poor's funds proper belonging to the old administrators, and clothes the new Board therewith. The old administrators are displaced or extinguished by the new. The statute transfers from the body it displaced or extinguished, to the body it created, all property held by the extinguished body 'for the use of the poor.' That is the obvious reading of the clause, and it is borne out by the decisions of the Court. Two questions especially have been raised under this clause, but neither of them is analogous to the present questions subsisting between the Board and the City. In the Bathgate case, 14th July 1854, the fund was vested, *not* in the extinguished administrators, but in another and independent body, and hence the Court held it could not be transferred from the old and extinguished administrators, who never held the fund, to the new administrators created by the Act, simply because they could not take out of the old administrators what they never had. In the Linlithgow case, 15th November 1855, the fund was also held, *not* by the extinguished administrators, but by a separate and independent body of trustees; and, for the same reason, the Court held that the fund could not be transferred from the extinguished body to the new body, simply because the extinguished body never held the fund, and it was impossible to take out of them what was never vested in them. In advising that case, the Lord Justice-General said—'By formal title this property stands *vested* in the kirk session. It does not stand vested in any of the parties specially mentioned in the Act, and who are required to make over the trusts vested in them, so as to enable the Parochial Board to administer the same for behoof of the poor of the parish. But still, although the property is held by a party not specially mentioned in the Act, the words of the 52d section are so very broad, especially in the denuding clause, that they might be made to reach such a case under certain supposable circumstances.' But the property in question being vested by formal title, *not* in the old poor law administrators, *but* in the kirk session, to be administered by them—having been administered and applied by the kirk session—*not* by the old poor law administrators—to the relief of poor *other than the poor on the roll*, and consequently to other beneficiaries than those under the old or new Poor Law Acts—his Lordship could 'not disturb the existing administration of that fund under this action, which calls upon us to hold that the fund falls under the provisions of the statute.' Lord Deas, in concurring, remarked—'The lands are undoubtedly held for the use and benefit of the poor. But it is not pretended that they are vested in the heritors and kirk session (old poor law administrators). They are vested in the kirk session only and their eleemosynary. A trust in the parties vested with the lands for behoof of the old poor law administrators has not been made out. In this state of matters, I see no ground for presuming that they belonged to a body (the old administrators) in whose favour the title was *not* taken, rather than to a body (the session) in whose favour the title *was* taken. The reverse is the natural and legitimate presumption;' and therefore his Lord-

ship held that these lands did not pass from the session to the Parochial Board under the 52d section of the statute, simply because they had never formed any portion of the property belonging to the old poor law administrators. Lord Curriehill held that, while the deed proved a *prima facie* trust in the parties different from the old poor law administrators, as the old poor law administrators had never *dealt* with the trust funds as belonging to their trust, and as this fund had been administered under the separate trust since the date of the trust in 1767 without challenge, it was not a trust in the old board which was transferred by the Act to their successors. The trust was not in the old Board. The beneficiaries under it were not the beneficiaries under the old poor law system. The Act only transferred to the new the funds vested in the old Board, and therefore the Act did not apply to this trust.

The reading of the clause, then, is just this, that whatever poors' funds, property, or revenues were in the names or hands of the old administrators (the Council in this parish) on the passing of this Act, passed by it to the new administrators (the Parochial Board), as residuary beneficiaries of the old board. Such being the principle of law, the Reporter will next apply it to the particular circumstances of each property, fund, and revenue before condescended on, and thereby endeavour to—

V. *Answer the question stated at the outset—What poors' funds proper were vested in the Council, as Poor Law Administrators, at the passing of the Poor Law Amendment Act, 1845, and as such, passed by virtue of that Act to, and are now vested in, the Parochial Board, the Poor Law Administrators created by the Act?*

1. *The old Poors' Assessment, or Stent*, leviabie under the Act 1579, and proclamation 1693.—From the accounts settled between the Council and the Board after the passing of the Act, it is seen that credit was given the Board for 'assessment collected on the period 15th May to 30th September 1845, £2954, 18s.' and for 'arrear, 1839 and 1845, inclusive, £317, 7s. 6d.' These would exhaust the balance in hand of the old stent. Accumulations, if any, from that source descended and ran into either of the charity workhouses, buildings, and stock. These will afterwards be considered—and hence there appears to be no residue from this source not already accounted for, or which will come to be duly inquired into afterwards under another head.

2. *Game Debts* under the Act 1621.—In so far as these fell in during the old administration, they appear to have been duly accounted for in the workhouse books. If any have fallen in since, they are due to the Board, and hence there can be no residue from this source. The Act is still in force, although unproductive for years past.

3. *Taxes* imposed under the Act 1686, the first City Police Act.—The residue under this Act fell into and became blended with the first charity workhouse, called Paul's Work, and that again descended to and fell into the last charity workhouse, which is now vested in the Parochial Board, by operation of the Poor Law Amendment Act. This

Act, with its consequences and residue, will afterwards be inquired into, and in the meantime, any farther consideration of it is unnecessary.

4. *Church-door Collections*, one-half of which was payable to the old administrators under the proclamation 1693.—The 54th section of the Poor Law Amendment Act provides, that in parishes where an assessment is levied for the poor, as in this parish, ‘All moneys arising from ordinary church-door collections, shall belong to, and be at the disposal of, the kirk session of each parish.’ In 1857 this Board took an opinion from the late Lord Rutherford, the late Lord Anderson, and Mr Dunlop, all then at the bar, and were advised, that while the Board had no right to administer any part of the ordinary church-door collections, they had right to make the sessions render an account of their administration therewith, so that ‘any misappropriation of the funds to purposes other than those to which they are legally applicable may be prevented.’ The counsel consulted were clear that the sole administration is with the kirk sessions, and that the Board cannot compel any arrangement by which the kirk sessions shall relinquish their right of administration of any part of the collections. The Charity Workhouse accounts, and the account settled between the Council and the Board at 30th September 1845, shew that the old administrators accounted for such collections as they got prior to the act—and hence no residue from this source remained to be transferred to the new Board that has not been accounted for. Since the passing of the Act 1845, the sessions have kept and administered the collections themselves, as they are entitled to do. As no funds can come now from these church-door collections to the Board, no interference has been taken in the sessions’ administration therewith.

5. *Annuity of L.300 under the Ale Duty Acts*.—The last extension of this Act expired in 1837. A residue from this source of revenue remained at the passing of the Poor Law Amendment Act. But as that residue fell into and became blended with the residue from other sources in the first Charity Workhouse, and that again became part of the second Charity Workhouse, and its grounds, buildings, and stock, which will afterwards be inquired into, under another branch, it seems unnecessary to notice this farther here, than to refer to the fact, that the Act settled L.300 per annum to employ the poor—that the Council gave an equivalent for that, in ‘having built and repaired a large house (Paul’s Work) for accommodating the poor;’ that the Legislature accepted that equivalent, and granted a continuance of the Ale Duties; and that thus legislative sanction was given to the conversion of Paul’s Work Mortification from its original purpose, to the use of the poor, to which use it was ever after exclusively and continuously applied till six years after the passing of the Poor Law Amendment Act 1845, as will be seen in the sequel.

6. *Unlaws*.—The old administrators were entitled, as representing the poor, to the fines imposed by different old statutes. The Act 1579, cap. 74, gave them the penalties imposed by the Act for profaning the Sabbath. The Acts 1661, cap. 34, and 1696, cap. 6, gave them the fines imposed for irregular and clandestine marriages. The Act 10 Geo. II., cap. 28, gave them the fines imposed for acting plays without

a licence, &c. These acts being seldom or ever put in force, little benefit ever accrued from them to the poor, although the Charity Workhouse accounts shew an occasional L.20 received from these sources from the Court of Session. Any benefit, however, accrued prior to the passing of the Act, was, from the Workhouse accounts, apparently duly accounted for by the old administrators. The benefit, if any, from these sources, subsequently to accrue, falls to be accounted for directly to the Parochial Board; and hence no residue remained of these fines, to pass with the passing of the Act, from the old to the new administrators for the poor. These various sources of revenue granted in relief of the obligation on the Council, as old poors' administrators, to maintain the poor, mostly passed away with, or previous to the passing of the Poor Law Amendment Act. All these sources, however, were proper poors' resourees—and hence any accumulations, or arrears outstanding due from any of these sources, being poors'-fund proper, passed with the Act to the new administrators. It follows that whatever residue remained from any of these sources, passed with the passing of the Act from the old to the new administrators. Residues did remain of these previous administrations, and were extant at the passing of the Act 1845, and still remain, as will be seen by and by.

7. *The City's Common Good*, instituted by decree-arbitral, 22d April 1583, 'for support and relief of the failziet and decayet burgesses, 'merchants, and craftsmen, their wyves, bairns, and auld servants, and 'uther pure indwellers of the town.'—The vicissitudes of this poors'-fund proper have not been few. Carefully and anxiously guarded by the benison of the Royal Odsman, who framed it, and protected it against all infringement, as he thought, by his Royal malison, nevertheless, in utter disregard of both, while the fund is still extant, it does not exist in its original integrity. If words could have saved it from being tampered with, surely these would:—'Whosomever contravenes 'the samen sall be repute and halden ane troubler of the quiet 'estaite of the common weal, incurre the note of infamy, and forefault 'and tyne their fredome for ever; and otherwise to be persewit and 'punishit as seditious persons, conform to the laws of the realm, with 'all rigour and extremity.' In its nature it was a poors' fund, and from its institution in 1583, it was liable to maintain the poor. In 1740, an attempt was made to relieve it so far, by the institution of the Charity Workhouse. By that institution the Common Good gave, and appropriated an annuity of L.200, and afterwards the 'grass yeard' (a part of same Common Good) on which the house was built, was given, granted, and appropriated by the Council in addition, in the hope, no doubt, that these together would be its full share of the burden of the poor. But that was an illegal contract, and the Common Good still remained liable for the maintenance of the poor. In 1822, the Common Good was very seriously perilled by the extraordinary conduct of its administrators. By the Royalty Extension Act 1809, lands belonging to St Cuthbert's parish were incorporated into the City parish, the Council being liable in compensation for poor's rates to St Cuthbert's for the ground so taken from them, and having their relief out of the poors' money. In 1823, the Couneil took an opinion from the late Lord Monereiff, who explained to them their rights. But with all the light of an Edinburgh Council, aided by the opinion of Lord Moncreiff, they

did not assess a sum to meet the payment to St Cuthbert's; and, in consequence, a debt accumulated against the Common Good, which, at 1833, amounted to the sum of L.4220. The Common Good was liable in this debt simply because the administrators of it, and of the poor's funds, refused to assess and levy funds to meet it. The Common Good was also liable for the annuity of L.200 to the Charity Workhouse. But the Council and Common Good were liable in both. To save the latter, the former very conveniently set off the debt due by them, and for which they ought to have assessed against the annuity of L.200, also due by them, and payable out of the Common Good. In other words, the Council paid off *two* debts owing by themselves, and the Common Good they administered simply by setting the one against the other. This saved it in the meantime; and while it created a fine municipal bone of contention for the time, the poor were no losers by it, neither were the rate-payers gainers, for the poor had to be maintained meantime, and the rate-payers had ultimately to make good the amount. But the Common Good was soon in peril again. By the Council's mode of accounting, the funds raised for the support of the poor were just the amount of both debts short. This shortcoming, added to the extra expenses attendant on the prevalence of malignant cholera in 1830, left a debt against the Charity Workhouse and poor's funds, including therein the Common Good, of L.13,000. It is beyond dispute now, that that debt was the debt of the Council, the ordinary administrators of the poor; and the highest legal authority, off the Bench, told them so on consultation at the time. But the Council repudiated the debt, and the city creditors would not rank it against the Common Good till the Poor's-house buildings and grounds, and stock, were first sold and applied in liquidation of it. The necessities of the poor would not admit of this. In the meantime an act was passed, which saved the Common Good so far,—the City Creditors' Agreement Act, 1838. By this Act, L.1000 of annual revenue of the Common Good is appointed to be paid to the city creditors, and the residue thereof is declared to be applicable to the ordinary municipal expenses of the burgh, and to no other purpose. But, although this legislation protected the Common Good so far from the claims of proper poor's debts at the time, it did not protect it any more than the guards and fulminations of the Royal Odsman; for, by the Annuity Tax Abolition Act of 1860, the Common Good is made liable to the Ecclesiastical Commissioners, as a security for the regular payment of the sums due to them, out of which the stipends of the city clergy are paid. The perils the Common Good ran, at the instance of the poor, would all have been saved, had the Council assessed the inhabitants, as they were entitled, if not bound to do, in a rate equal to the admitted poor's debts, at the time of their contraction. Be that, however, as it may, the Common Good was, at the date of the passing of the Act 1845, diverted from its original purpose to an entirely different one, and that diversion protected by the City Agreement Act, which, from its date, took the Common Good *therein specified* out of the poor's administrators, and transferred it to others, and, for other than for poor's purposes;—and hence the Common Good, originally poor's funds proper, not being in the Old Administrators as such, at the passing of the Act, could not pass with it to the New Administrators created by that Act; and in consequence the

Common Good, so far as specified in the Agreement Act, could not pass with it to the New Administrators created by that Act; and the L.200 annuity, payable thereout, falls to be written off as a poors' asset, in accounting with the city. It is different, however, with the 'grass yearld,' being a portion of the Common Good and patrimony of the city, dedicated and appropriated to the use of the poor,—admitted again and again by the Council and the city creditors to belong to the poor,—and at the date of the Act 1845, held by the Old Administrators under decree of the Court of Session 'for the benefit of the poor of the city.' That ground, and the buildings erected thereon, so held under declaratory decree of Court, appear to be all the residue to which the poor are now entitled out of the Common Good originally instituted for the 'support and relief of failziets and decayet burgisses, merchants, and craftsmen—their wyves, bairns, and auld servants, and uther pure indwellers of the toun.' But this will be more particularly enquired into afterwards.

8. *The Archdeanery of Lothian*, consisting of the rectory of Curry, parsonage, house, glebe, church lands, tithes, fruits, rents, profits, and duties thereof, were granted by King James VI. to the Council in the Golden Charter (1603), for the use of the ministers, college, and poor, and the grant was confirmed by his successor, Charles I., in 1636. The Reporter has not the means of ascertaining what the interest of the poor in this grant was, nor when the subjects of it were disposed of. It is notorious, however, that the city does not now enjoy the subjects of the grant. Whether the poors' portion of it was accounted for to them or not, when the Council disposed of the Arch-deanery,—the subject itself being gone long antecedent to the period when the obligation on the Council to maintain the poor came to an end,—it is charitable to suppose the poors' share of the price was duly accounted for, and hence, both stock and revenue from this source are irretrievably gone, at least as a poors' asset.

Mortifications—

9. Sir James M'Lurg mortified in the hands of the Council for a Charity School,	£166	13	4
10. Mrs Hair also mortified in the Council's hands for necessitous poor, the interest of which being to be administered by the two senior ministers of Edinburgh,	222	4	6
11. John Riddell, of Grange, likewise mortified in the Council's hands for the common poor,	100	0	0
12. Thomas Stoddart also mortified in the Council's hands for the common poor,	44	8	10
13. Sir Thomas Hope, of Craigiehall, mortified in the Council's hands for maintaining an old burgess,	83	6	8
Together,	£616	13	4

The grants of these five Mortifications have not been seen. The objects of them have been gathered from the information given by the papers afterwards adverted to. As from the first notice of them, these five mortifications went together (till the Conneil parted 1 and 2 from the other three in ranking them as city debts under the Trustees' Act), it will be convenient to consider them together.

On 30th June 1719, the Council ordered a bond to be granted for these five mortifications, accumulated into one sum of L.616, 13s. 4d., to the Kirk Treasurer, as representing the poor, and his successors in office. By this act and bond, the Council dedicated the whole of the above sum, whatever the terms of the original mortifications might be, to the use of the poor. The Council, from 1719 to 1741, paid the revenue from these mortifications to the Kirk Treasurer, who administered it with the other poor's funds indiscriminately for the benefit of the poor of the parish. From 1741 that interest was accounted for to the Managers of the Edinburgh Charity Workhouse, and was administered by them with the other poor's assets put at their disposal for the use of the common poor, till the passing of the City Trustees' Act in 1833. By grant and usage alike, if not by the terms of the original mortifications, these became poor's assets proper, and were so dealt with for upwards of a century. In particular, on 18th December 1782, the Charity Treasurer required funds, and his Managers, qua-factors, applied to the Town Council, their principals, to raise them. On 11th January 1783, the Bank of Scotland offered L.4000 to purchase corn, and L.1000 for the use of the Charity, to the Council. The Council accepted the offer. The city assessor suggested that the charity treasurer should sign the bond also, to the effect of 'binding the subjects and effects of the Charity Workhouse to repay the sum to the city.' Afterwards, 23d April 1783, the Council insisted 'on certain sums of mortified money in the town's hands on bond to the Kirk Treasurer for behoof of the poor of the city being assigned to the bank in security of the loan.' Fisher's lands were also included in this security which was granted; and on 6th August 1783, the city treasurer uplifted the L.1000 from the bank, and paid it to the charity treasurer. This loan was afterwards repaid by the Charity Managers. But it shows not only how the mortified moneys, but how 'the subjects and effects of the Charity Workhouse,' were so completely dealt with by the Council, by the Bank, and by the Charity Managers, as poor's-property proper, as that the Council and bank took them in pledge for a loan, for the sole and special purposes and necessities of the poor.

But while this was so, and the revenues from these mortified moneys were paid to, and pledged in security, and administered indiscriminately for the use of the poor, the Charity Managers paid all along a sum equal to the interest of L.166, 13s. 4d., to a charity school teacher appointed by the Council, and a sum equal to the revenue of L.222, 4s. 5d. to the two senior city ministers for distribution by them. These five mortifications came ultimately to be accumulated with No. 14; and consideration of them will be resumed along with, and when considering, that mortification.

14. In 1730, John Wightman, of Maulesley, late Provost of Edinburgh, mortified in the hands of the Council 3000 merks, or			
for behoof of the poor of the city;	£166	13	4
And, L.4000 Scots, or			
for the relief of the poor of the city.	333	6	8

Together,	<u>£500</u>	<u>0</u>	<u>0</u>
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For the revenue of the first sum, the Council, by their Act dated
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30th July 1730, ordered that a bond be extended, binding the good town after the mortifier's death, 'thereafter for ever to pay the same to 'Thomas Newton, kirk treasurer of the city, and his successors in 'office'—that is, to the known official representative of the poor. For the revenue of the other sum, the Council, by the same Act, statuted and ordained (Mr James Davidson, the city treasurer, and his successors in office after Provost Wightman's death,) 'that the same 'shall be layed out and employed yearly, or oftener, in buying of 'oatmeal,' to be sold cheap, 'to the poor inhabitants within the city.'

By these Acts of the Council, these Mortifications were dedicated and *given to the Common Poor*. Accordingly, the interest on both sums was accounted for to the Kirk Treasurer, and applied by him indiscriminately, with the other poors' revenues, to the use of the common poor, both prior to the institution of the Charity Workhouse, and afterwards by the Charity Managers. The Council at some time or other lent the capital sums mortified in their hands by Provost Wightman, amounting to

£500 0 0
616 13 4

Together, . . . £1116 13 4
on the security of the Ale-duty; for it appears from the Council records, 11th October 1836, that at that time 'the Kirk Treasurer accordingly 'stands in the books of the Ale-duty as a creditor of the city to the 'extent of £1116, 13s. 4d., and has been in the practice of draw- 'ing from that duty the interest corresponding to the said capital 'sum.' Both by grant and usage of upwards of a century—if not by the terms of the original mortification also—these sums have been treated and dealt with as proper poors' assets. In particular, Provost Wightman's mortifications were included with the other poors' property proper, assigned to the bank in 1783, in the transaction then gone into by the Council, under which the Council raised for the use of the poor the L.1000 already mentioned.

A claim was made under the City Trustees' Act for the bond of L.1116, 13s. 4d., being the sum of the above five mortifications; and, on 21st September 1838, the Council's joint Committees admitted the claim as poors' funds proper, as already mentioned, thus—

Original debt,				£1116 13 4
Deduct for Free School,			£166 13 4	
For distribution by two senior ministers,	222	4	5½	388 17 9½
				£727 15 6½
Balance to Charity Workhouse,				

The Ranking was approved of by the Council, and sanctioned by the Trustees for the City creditors. The final Ranking at June 1833, stood thus:—

Original debt,				£1116 13 4
But interest to 1st August 1833, falls to be deducted, to capitalise the debt at 1st June 1833,			9 5 1	
				£1107 8 3
Remains,				
Deduct capital, the interest of which by usage had been paid by charity to schoolmaster, and two senior ministers, as above,			388 17 9½	
				£718 10 5½
Remains,				

Deduct dividends from Ale Duty capitalised at 1st June 1833,	113	2	6 $\frac{6}{12}$
But add proportion of reduction on principal of Charity School and City Ministers' Mortification,	£605	7	11 $\frac{2}{12}$
	42	14	7 $\frac{7}{12}$
Sum ranked,	£648	2	6 $\frac{9}{12}$

This sum was duly settled on 10th March 1843, in the general adjustment and partial settlement of accounts which then took place between the Charity Workhouse and the Council before quoted. The dividend on the bond then delivered—with the dividends on Paul's Work, and other mortified moneys—were duly accounted for by the City to the poor from 1843, till the passing of the Poor Law Amendment Act, 1845, as the accounts instruct. The account to 30th September 1845 contains this item of charge—

<i>Dividends and interests</i> ,—one year's interest on City Bonds, and sundry mortifications, in name of Kirk Treasurer,			£108	6	10
PAUL'S WORK, 3603 to 3660, 28 bonds,	£2800	0	0		
No. 3958, one bond, per	120	0	0		
No. 4113, Kirk Treasurer,	600	0	0		
Nos. 4120 and 4121, Charity Workhouse,	200	0	0		
Total,	£3720	0	0		

And having been so accounted for, no residue of these five mortifications remained at the passing of the Act, to pass thereby to the new administrators.

15. *Dr R. Johnston's Mortifications.*—

In 1640 Dr R. Johnston mortified for charitable and benevolent purposes in the city of Edinburgh,

£3000 0 0

On 8th December 1641, the Town Council by their Act appropriated

£1000 0 0

Of these mortified moneys, and appointed that sum to be employed for setting poor people to work.

On 26th January 1642, the Council, by their Act destined another

1000 0 0

for the poor of the city of Edinburgh.

To poor—together

£2000 0 0

On 9th February 1642, by another Act, the Council, with consent of the ministers and kirk session, appropriated and appointed both sums to be given to the Hospital, afterwards known as Paul's Work. This L.2000 was given in loan to the city of Edinburgh, who granted bond therefor to the undertakers of Paul's Work—of which Work, Hospital, or Charity Workhouse, or its successor, the first Charity Workhouse—that sum has formed a portion of the stock—the interest or revenue therefrom being paid from its first appropriation for the use of the poor, down to the passing of the Poor Law Amendment Act, and for six years thereafter. As this fund runs into and becomes a portion of Paul's Work property, like any other donation to that institution, and as Paul's Work property will next be considered, it is not necessary here to enquire farther into this mortification. Whatever the original

object of it was, for upwards of 200 years this fund had by all previous poors' administrators been uniformly applied to the use of the poor till the Council changed its destination in 1852—and both by usage, by admission in the ranking of the city creditors, and by homologation of the appropriation after the passing of the Act 1845, in a question with the Poor's Board, as well as for the other considerations now to be mentioned in reference to Paul's Work, this fund is a poors' fund proper, which passed with the Act from the old to the new administration.

16. *Paul's Work, including Dr R. Johnston's Mortification* to the extent of L.2000, and other funds.

This mortification is the earliest known poors' property now extant.

In or about the year 1479, Thomas Spence, Bishop of Aberdeen, founded an hospital in Leith Wynd, 'for the reception and entertainment of twelve poor men,' and dedicated it to the Virgin Mary, by the appellation of 'the Hospital of Our Lady in Leith Wynd.' He endowed the same with lands and rents to the amount of L.119, 15s. Scots per annum, which, before the year 1573, by the benefactions of others, was increased to the yearly sum of L.137, 19s. 7d. Scots.

In 1582 the Council of Edinburgh drew up certain orders to be observed by the Masters, Brethren, and Beadsmen, applicable to its original endowment of an hospital.

In 1619 the Council, considering that the woollen manufacture would be a great advantage to the nation in general, and to this city in particular, by employing its poor, wrote to William Dickson, of the city of Delft, in Holland, to repair to Edinburgh, and confer with them. After conference, the Council entered into a contract with him to instruct the people in making woollen stuffs, viz., grograms, says, bays, &c., and to import experts in that art, with the necessary implements,—the contract being, that he was 'to take such poor boys and girls as 'the Council should think proper to put to him,' the Council paying 13s. 4d. Scots money weekly for the space of one year for each such boy and girl, and to give each of said children a suit of apparel, three shirts, with proper bedding and furniture necessary for the house. For the greater convenience of disposing of the stuffs made, the Council undertook to erect a sale hall.

In implement of this contract, certain houses were erected at the foot of Leith Wynd, which cost £1359, 4s. 6d. Scots. This being deemed a most laudable undertaking, divers benefactions were made to it. To encourage these, the Council gave a formal constitution to the work. The preamble is in these words:—'For sua meikle as the Provost, 'Bailies, Councell, and Deykins of Craftes for introducing of vertue 'within this country, quhairby ane number of poore ones quho has no 'means for upbringing and educating of themselvis in sum vertuous 'trade, that thairafter they might win thair living with sum industrie, 'and not become beggaris, and burdenable to these pairts quhair they 'are borne and bred, had fund that the inbringing of all sorts of manu- 'factoris of wool to be the most expedient way baith for relief of the 'said poore, and for training thame up in vertue, that they might 'no longer prove chargeable to the cuntrey, but might hapilie be- 'cum gud members of the Comonweil,'—and having 'builidit certain 'houses at the foot of Leith Wynd, at the place callit Sanct Paul's

‘Wark, and had brocht sum strangers to have been the beginners of
 ‘such laudable intentionis, and thair beind a number of honest men
 ‘zealouslie for the gud of the comonweill that way inclinit, willing to
 ‘bestow of thair own proper means for the entertainment of certaine
 ‘poore to quhome they ar otherwaiyes subject, and to bring them upon
 ‘the said work till they may win thair awn living thamselvis.’

On this preamble the Council ordained that a certain donation was to give the donor a right of presentation of boys. To encourage donations farther, the Council declared that the profit to be made upon the work was to ‘redound to the entertainment of anc or more poore, as ‘the same sall be fund sufficient,’—and when the Council had a surplus of funds, these were to be employed ‘upon heritage to be mortified to the said warke foresaid.’

Two days after the passing of the constitution, benefactions to the extent of 2500 merks were made to it, and other considerable sums of money—including the appropriation of Dr Johnston’s £2000 by the Council—were subscribed and dedicated to its encouragement.

All the zeal and encouragement with which it started, however, did not ensure its success, for in 1683 the Council converted the work from a woollen to a linen manufactory, in which boys were to be trained up in virtue and industry, and entered into a tack of the work to Sir William Binny. This inversion of the mortification was questioned in Court, but sustained, on 22d November 1698, by a majority of one.

The work does not seem to have flourished in a tenant’s hands any more than in the undertakers’, for, as will be seen immediately, a few years thereafter the Council is found converting it into a Charity Work-house.

In the year 1686 the first City Police Act was passed. To modern men of business this seems a very extraordinary and stringent sanitary law indeed.—‘Our Sovereigne Lord, considering the many complaints ‘of the streets, wynds, closses, and other places of the City of Edinburgh, which is the capital city of the nation, where the chief judicatories reside, and to which his Majesty’s lieges must necessarily resort and attend, as also the great trouble that doth arise to his Majesty’s lieges and the inhabitants by the great number of clamorous beggars ‘repairing in and about the said City of Edinburgh: Therefore ordains ‘the present Magistrates and their successors to lay down effectual ‘ways for preserving the said town of Edinburgh, Canongate, and ‘suburbs thereof of nasteness of the streets, and from freeing and ‘purging the same of those numerous beggars which repair to said ‘Burgh, and that under the pain of L.1000 Scots yearly,’ to be paid by the Magistrates for the time to the Lords of Session—the Magistrates having no relief of the fine from the common good. But the Magistrates are encouraged to make proposals to the Lords of Session for the objects of the Act, and if *the Court judge the Council’s proposal rational*, the Court are to impose, with consent of the Council, such assessment ‘as they shall find just and necessary for purging and clearing the ‘town of the foresaid nasteness.’ The Council are ordained to put ‘such Acts and ordinances as shall be agreed upon and settled by the ‘Lords of Session for the effect above mentioned to vigorous execution, ‘under the pain and certification above mentioned, to be incurred by ‘the Magistrates yearly in caice the said city be not effectually cleansed ‘and purged of the foresaid nastiness and beggars, without any relief

‘to the Magistrates, out of the common good of the said burgh, or from the inhabitants.’

On 21st June 1713 the Lords of Session, considering the trust and power given them by the last-mentioned Aet, and ‘ane overture made to them by the magistrats of the good town on 5th January last, whereby they having already maintained and undertaken farther to maintain all the begging poor within the said town, for the two years from Whitsunday 1712 to Whitsunday 1714, conform to an obligation granted to them, of this date, for that effect, upon their being allowed to exact the imposition underwritten,’ imposed a tax of ‘two per cent. for two years upon the College of Justice.’

The Councel same day approved of, and subscribed ‘ane bond,’ binding themselves, and as representing the whole body and community, that all the streets, closes, and stairs, shall be keepit free from elamorous and begging poor, and they maintained in suitable places appointed within the town for that end, from the date hereof, to the term of Whitsunday next, under the penalty of L.500 merks Scots, to be disposed of by the Lords as they may think fit, in ease of failzie, by and attour performance of the premises.’

In 1716, the Ale Duty Aet, 3d Geo. I. was passed for this, among other purposes, viz., of ‘setting an annual fund of Three hundred pounds per annum towards employing and maintaining the poor of Edinburgh, and adjaeent counties, which shall commence and grow due after the 1st day of July 1718.’

On 25th June 1718, the Councel issued this proclamation:—‘That by the late Act of Parliament, containing per favors of this eity the Duty on Ale, &c., there is a fund provided for maintaining and employing the poor of this city, and of the shires of Edinburgh and Haddington, commeneing from the 1st day of July next: Therefore the Lord Provost, Magistrates, and Councel, do hereby strietly command and charge all the vagrant and begging poor within the eity and suburbs, to enter themselves *to the workhouse prepared for them in Paul’s Work*, on the said 1st day of July next, where provision is made for their maintenance, to be employed as the said Aet direets.’

In 1722 the Ale Duty Aet was continued by the 9th Geo. I., specially because, among other proceedings, the Magistrates ‘have built and repaired a large house for aecommodating the poor to be employed in manufacture.’ The act was extended for nineteen years, for this, among other purposes, viz., ‘for maintaining and employing the poor.’

On 24th March 1731, the Council passed another act, to the effect, ‘That, so many of the begging poor as shall be taken up, entertained and employed in the said workhouse, who have any title to charity in any parish within the shire of Edinburgh, over and above the number of sixteen, who are to be presented in terms of the Aet, that every such person shall be employed and entertained in the said workhouse at the rate of 1s. 9d. sterling per week;’ or ‘sueh poor persons shall be earried to the parish to which they belong, to be there entertained at the option of the parish;’ ‘and to the ends and purposes hereby intended of entertaining and employing of the poor of this eity and liberties, and shire of Edinburgh, in manner before mentioned, may be effectually answered; and that all vagabonds, vagrants, and sturdy beggars, or others, may be effectually restrained from begging within

‘this city and liberties, or within the shire of Edinburgh, the Council, as managers and administrators of the new gift of two pennies Scots upon all ale and beer,’ ‘Do enact, that in so far as the several funds appointed by this Act to be paid into the overseer of the poor for answering the purposes before mentioned, shall fall short of the expense that shall be defrayed on that account, the sum of L.300 appointed to be paid under the Act, at least so much thereof as is not already appropriated by the Council, with consent of the overseers, for another purpose of the same kind, and the appropriation thereof continued, shall be paid in monthly to the said overseer.’

The Act thus institutes Paul’s Work the first Charity Workhouse, and then proceeds to give it a constitution,—Declaring, that ‘if upon tryal it shall appear that the several funds hereby appointed for defraying the expence of the said Charity Workhouse, and purposes before expressed, shall not be sufficient therefor;’ in that event, ‘the Council have agreed and concerted with the Lords of Session, to lay on and impose such other funds for making good such deficiency, to be collected and levied from the persons lyable in payment thereof, in manner warranted and directed by the laws and acts of Parliament made on that behalf.’

In 1738, the proposal for the New Charity Workhouse was made and accepted. In 1740, all the poors’ funds and property of every description were appropriated for the support of the New Workhouse, including ‘annual rents of sums of money, and rents of houses and shops *mortified* for the use of the poor of the said city.’ On 11th June 1740, the present Poor’s-house Grounds were likewise given, granted, and appropriated ‘to the use of the workhouse for ever, at least so long as the poor of the city shall be employed and maintained therein.’

But having united Paul’s Work funds to the last Charity Workhouse, it is not necessary to pursue the inquiry further now, as it must necessarily be resumed and continued, in disposing of that branch of the remit.

Meantime it will be kept in view, that the ‘Hospital of our Lady, in Leith Wynd,’ was, under the administration thereof above adverted to, transposed into an Industrial Charity School, *first*, for training the poor in woollen, and next in linen manufactures,—that the Council’s power to make that inversion was confirmed by judgment of the Court,—that the same administrators thereafter converted it into a Charity Workhouse,—tendered it in that shape as a *surrogatum* to the Legislature for L.300 per annum of poors’ funds proper,—and was accepted by the Legislature as implement of the Council’s obligation for that annuity,—that thereby legislative sanction was given to the last mentioned inversion, and the appropriation of the hospital stock and revenues to the use of the poor,—that finally these poors’ funds were appropriated by same administrators to the use of the New Charity Workhouse, an unquestionable common poors’ institution. And hence the residue of the funds and property of the ‘Hospital of our Lady in Leith Wynd,’—of Paul’s Work Woollen Industrial Poors’ School,—of Paul’s Work Lincn Industrial Poors’ School,—and of the first Charity Workhouse in Leith Wynd, Edinburgh, was, by appropriation of Council, and legislative sanction and usage, poors’ funds proper at the institution of the second Charity Workhouse. And it will afterwards be seen, that these continued poors’ funds proper in the hands of the Old Ad-

ministrators at the passing of the Act 1845, and passed along with the second Charity Workhouse, of which it then formed a part, by the operation of that Act, from the Old to the New Poors' Administrators.

17. *Fisher's Mortification*, L.466, 13s. 4d.—Previous to 1754, a Mr Fisher mortified certain subjects for behoof of the poor. The subjects seem to have been vested in the Kirk Treasurer. They were pulled down to make way for the Royal Exchange. In 1765, the Kirk Treasurer granted a disposition of the subjects to the Council. The Council retained the price. On 22d May 1765, their record bears that the whole price at Whitsunday 1765 amounted to £672 0 0
Of which principal, £466 13 4
Interest, 205 6 8

672 0 0

Two bonds were ordered, one for principal and the other for interest, in name of the Kirk Treasurer, and his successors in office, 'for the use and behoof of the poor belonging to the city of Edinburgh.' The Council record on 12th March 1766, bears that the Workhouse Managers had 'received lately,' 'the byegone annual rents of Fisher's land, 'being £205, 6s. 8d.' In 1783, 'Fisher's land' was assigned with the other Mortified Moneys to the Bank of Scotland in security of the £1000, then advanced for the use of the poor. On 7th March 1787, a conference on funds between the Council (the principal), and Managers (their factors), was held. The Managers stated, 'they had no funds at present, but an arrear of part of the revenue of Paul's Work Hospital, which was the rent of Forglen's Park, from Whitsunday 1766, 'at £10 sterling yearly, and the city's bond for £466, 13s. 4d. He (the Lord Provost) was of opinion that the Managers might apply to the Council for said arrear, and for leave to raise money on said bond.' The Reporter has not been able to trace the Mortification farther. No claim seems to have been made for it under the Trustees' Act 1838, leading to the inference that the amount had previously been paid.

18. *Shaw's Mortification*.—It is not necessary to enquire into the history of this Mortification, as the admitted revenue of £10 therefrom has been annually paid and accounted for to the poor, down to the present time, and forms part of the admitted assets of the Board.

19. *Seat (West Church)*, belonging to, and forming part of the revenue of Paul's Work.—This has been regularly accounted for, and administered by the Board, and their predecessors, as poors' administrators, and is admittedly now a Poors' Board asset.

20. *Feu-duty, 43 Leith Street*, belonging to, and forming part of the revenue of Paul's Work.—This was regularly paid to the Board and their predecessors, as Poors' administrators, down to 1852, when the payment was stopped by the Council, with other Paul's Work revenues. This will afterwards be enquired into under another branch.

21. *Charity collected in poors' boxes*, in Greyfriar's churchyard.—The contents of the poors' boxes, at the passing of the Act, were duly accounted for by the old Administrators to the new. There has been

nothing collected for some years in these boxes. Whatever sum may arise from them falls to be accounted for directly to the Parochial Board, and it is not necessary to say more on the subject under this remit.

22. *Donations and Legacies.*—Very considerable sums arose from this source. But these seem to have been all duly accounted for at the time; and any residue thereof either applied to the poor or merged into the Charity Workhouses, and with them passed by the act from the old to the new administrators.

23. *Collections at Episcopal and other meeting-houses.*—These were also considerable. Such entries as the following are to be found in one year's accounts of the workhouse:—

General Contributions	-	-	-	£1639	6	6
Received (Theatre), Mrs Siddons	-	-	-	201	13	11
Mr Dun's Assembly	-	-	-	110	4	11
Mr Cleeve's Sermons	-	-	-	68	2	0
Makes in all				£2019	7	4

These contingent sources terminated with the old administration, and if any residue remained, that merged into the workhouses and stock afterwards claimed.

24. *Dues of Marriage not solemnised in Churches.*

25. *Dues of Dead and Passing Bell.*

26. *Dues of Burial Warrants and Green Turfs.*

27. *Fines for Fornication.*

These sources produced also a considerable though contingent revenue to the old administrators. In the year to 1st July 1825, the churchyard dues amounted to L.388, 4s. 7½d. Even the revenue from No. 27 had at one time been worth looking after. On 11th December 1771, the Council directed the Kirk Treasurer to furnish quarterly an account 'of such money as shall be in his hands (at the respective quarter days there appointed), arising from Fornication Fines, Kirkyard Dues, &c., distinguishing the fornication fines from the other funds 'belonging to the house.' The last payment received from the churchyard seems to have occurred in 1833. At that time the Council would appear to have resumed them; and as the workhouse right to them apparently depended only on the conveyance from the Council, which was reduced in 1843, before the passing of the Poor Law Amendment Act, it does not appear that the old administrators could have anything in respect of these contingent sources of revenue to pass with the act to their successors.

28. *The Edinburgh Charity Workhouses, and grounds, buildings and stock thereof.*—Having already traced the first Charity Workhouse, from its origin of the 'Hospital of our Lady in Leith Wynd,' till it became poors' property proper, and merged into the second Charity Workhouse in 1740; and having also traced the second Charity Workhouse, from

its institution in 1740 till the present remit, a few facts only in addition remain to be stated, bearing on the transactions of the old administrations with the united property.

By the contract in 1740, all the poor's funds were appropriated to the New Charity Workhouse, including therein the 'annual rents of sums of money, and rents of houses and shops mortified for the use of the poor.' On 2d May 1750, the Council 'having had under consideration the present state of the hospital, called St Paul's Work, founded by Sir Thomas Spence, Bishop of Aberdeen, anno 1479, who then mortified several houses and grounds annual for the support thereof, and also that Mr Robert Johnston, Doctor of Laws at London, did legate and bequeath to the Council in perpetuity the sum of £1000 sterling of capital stock, and the inhabitants of Edinburgh did largely contribute, and several others made donations, all for the charitable purpose of training up the young, poor, and indigent of the city to industry, the interest of which mortification and contribution has been hitherto applied by the Council for the ends above mentioned; and the Council also having had under consideration a memorial "for the Managers of the Charity Workhouse," concerning their training up such number of orphans, male or female, within the said workhouse, as the foresaid funds of Paul's Work shall be able to maintain and educate; and the Council, judging from the experience they have of the good management of the said workhouse, that this fund, in their hands, under the direction after-mentioned, is more probable to answer the good design of the donors than it has hitherto done, while in the hands of private undertakers, therefore disposed, for seven years from Martinmas 1748, the whole annual revenue of the said hospital, called St Paul's Work, and of the other conjoined funds in use to be paid thereto,' to the Charity Workhouse Treasurer, to keep 'twenty such children as are entitled to the City of Edinburgh Charity, to be lodged in separate wards, educated separately from the other poor children,—wear a different dress, and to be called the Children of Paul's Work.'

On 27th June 1750, intimation by order of the Council was made, 'by the precentors of this city on Sabbath next, that the Council have conveyed the funds of Paul's Work to the Treasurer of the Charity Workhouse, for the space of seven years, for the maintenance, clothing, and education of the children of decayed burgesses; any such who have children may apply to ye Council, in order to their being admitted.'

On 26th August 1752, the Council having reported on the account of stock and revenue of Paul's Work Hospital, ordered the balance of £4, 12s. 10d., due by the treasurer, to be paid to 'Mr James Stirling, present treasurer of Paul's Work, for behoof thereof.' That the stock handed over by old treasurer amounted, in bonds and cash, to £3215, for which they ordered a city bond to be granted 'in favour of Mr Stirling and his successors in office, for behoof of the said Paul's Work,' and that the following bonds be also delivered to him, that he might recover payment of the contents, viz.—

'Bond by deceased James Syme, solicitor, for 1000 merks.

'Bond by David Earl of Buchan, and Mr Charles Erskine, for £50 sterling, whereon interest is due since Martinmas 1748, besides what may be due to former contractors, and

'Bond by David Hay of Naughton, for 1000 merks, which is irrecoverable.'

From 1750 to 1781, the whole revenues from Paul's Work were accounted for to the Charity Managers. On 6th June 1780, 'Mr Richard Richardson, treasurer of the Charity Workhouse of this city,' laid before Council 'accounts of feu-duties, payable by certain proprietors, or possessors of Paul's Work and Saint Ninian's Row, to the 'Charity Workhouse.' And the Council disposed, conveyed, and made 'over to the said Richard Richardson, and his successors in office, for the 'use and behoof of the said Charity Workhouse, all bygone arrears, 'and the said annual revenue for the space of seven years complete, from 'Whitsunday 1781.'

In 1783, the transaction with the Bank of Scotland, already mentioned, was gone into, and the mortified moneys, including Paul's Work bonds, were assigned by the Charity Managers, at the request of the Council, to the bank in security of the £1000 then borrowed for the use of the poor. On 7th March 1787, a conference, already adverted to, was held between the Managers and Council as to raising funds, which resulted in the provost expressing his opinion, that the Managers might apply to the Council for leave to raise money on the city's bond, per £466, 13s. 4d. (Fisher's), and for payment of the arrears for Forglen's park. The Managers accordingly presented a petition to the Council, in which they stated that they had all along got the whole revenue of Paul's Work, and asking payment of the arrears for Forglen's park. The petition does not seem to have been at once entertained, for on 2d June 1787 a committee of Charity Managers was appointed to thank the Council for having appropriated the whole funds of Paul's Work Hospital for the use of the workhouse, and to entreat the Council 'to 'order payment of what arrears may be due from the revenue of 'Forglen's park, which makes part of the fund of the Paul's Work 'Hospital;' and on 25th July 1787, the Council 'authorised the 'chamberlain to settle the foresaid matter with the treasurer of the Charity Workhouse.' Obstacles to the payment, however, having afterwards arisen, a Committee of Managers met the Lord Provost and Magistrates on 23d February 1790, and a reference was made of the matter of Forglen's park to the Honourable Henry Erskine, and William Galloway, Esquire, one of the Magistrates. The referees seem to have decided in favour of the workhouse, for these rents were ever afterwards accounted for to the workhouse till 1822, when they were temporarily withheld as against a debt claimed by the city against the Charity Managers; but ultimately paid down to Lammas 1852, with the revenues of the other Mortified moneys.

By the Royalty Extension Act 1809, already adverted to, the Council came under obligation to pay certain sums, in lieu of rates from 1803, to St Cuthbert's parish, for portion of that parish taken into the royalty, the Council having right to reimburse themselves out of the poors' assessments. The Council paid these sums annually, from 1804 to 1820 inclusive, without assessing or retaining anything in respect of them out of the rates. On 21st February 1821, the Council claimed the advances so made from the Charity Managers, then amounting to principal,

Periodical interest,	£4500	0	0
					1819	18	9

Together,	£6319	18	9
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The Charity Managers resisted the payment. The Council were

obligants; the Council had the power of assessing for the sums paid; the Council had not assessed for a shilling more than the necessities of the poor required. All the money given to the Charity Managers (the factors) to disburse, had been disbursed, and liability beyond that was denied. In this state of matters, the Council withheld the yearly payment given to the Charity Workhouse, and £10 of feu-duty for Forglen's park. An arrangement, however, was come to on 20th February 1822, by which a payment was made to account of the debt, and these sums were ordered to be paid to the Charity Managers. It is seen before how this debt for advances to St Cuthbert's parish was ultimately settled by the acceptance of the Council's proposal in 1838, by which the annuity of £200 per annum, payable to the Charity out of the Common Good, was valued at 25 years' purchase, and applied in paying off this debt, and a general settlement of the Mortified moneys was completed, the capital of Mortifications remaining after paying that debt being thereby fixed as follows:—

Kirk Treasurer's debt,	.	.	.	.	£727	15	6 $\frac{8}{12}$
Paul's Work debt,	.	.	.	.	3215	0	0
Balance of £200 annuity, after paying City debt for advances to St Cuthbert's,	.	.	.	.	601	15	0
<i>Capital together,</i>					£4544	10	6 $\frac{8}{12}$
And the <i>Revenue</i> ,—interest at 3 per cent.	.	.	.	.	£138	3	3 $\frac{1}{12}$
Forglen's Acre,	.	.	.	.	10	0	0
Making together 'total amount of future annual payments 'to be made by the City,'					£148	3	3 $\frac{4}{12}$

The transaction effected in 1838 was accepted by the Charity Managers, and sanctioned by the city creditors, and finally concluded as already mentioned in 1843. This completed transaction was followed by the decree of Reduction and Declarator in 1844, and that by the Poor Law Amendment Act in 1845. Acting upon the completed arrangement, 'the total amount of future annual payments to be made by the 'city,' was made by the city down to 1852, when, as already mentioned, the Council declined to make farther payments on account thereof.

The Reporter understands, from the published City Accounts, that from 1852, 'the total amount of future annual payments to be made by 'the city to the poor,' has been received by Trinity Hospital, and applied to the use of that institution, in direct breach, according to his views, of the concluded transaction between the new and the old administrators, homologated by the Council after the passing of the Poor Law Amendment Act, under and by virtue of which these funds and revenues vested in the Parochial Board.

Having submitted the facts and circumstances in detail, the Reporter has now respectfully to

VI. Report.

1. That Paul's Work Mortification and Revenues thereof, all along vested in the Council, having by judgment of the Court been found to be substantially a mortification for the poor,—having been dedicated

with consent of all parties interested therein to the use of the poor, at least in 1718, if not long before that date, and that dedication having been accepted by the Legislature as a surrogatum for payment of an annuity of £300, specially appointed by Act of Parliament to be made to the poor,—having been, if not all along, at least from that date down to the passing of the Poor Law Amendment Act, and for six years thereafter, dedicated and applied by the Council (the old administrators), with consent of all interested, to the use of the poor,—having been ranked as a city debt,—and the right to the future revenues thereof in the poor (or their then representatives, the Charity Managers), offered and accepted as part of a settled transaction between the Council, on the one hand, and the poor, on the other,—and that transaction having been homologated by payment of these revenues for behoof of the poor, after the passing of the Poor Law Amendment Act; the stock and revenue of Paul's Work mortification are poors' funds proper, in the sense of the statute 1845, which, on the passing thereof, passed from the old administrators and representatives of the poor (extinguished by that Act), to the new representatives of the poor (created by that Act),—the same being property vested in the Town Council, for the use and benefit of the poor of the parish, under Act of Parliament (the Ale Duties' Act),—under and in virtue of grant and appropriation, followed by uninterrupted usage of upwards of 127 years at least, and by transaction, followed by homologation on the part of the Council.

NOTE.—These Mortifications represent—

<i>Stock, bonds, p.</i>	.	.	.	£3215	0	0
Forglen's Acre L.10 p. annum, say	.	.	.	250	0	0
				<hr/>		
			<i>Stock,</i>	£3465	0	0
<i>Revenue, being 'total amount of future payment to be made</i>						
<i>' by the city ' to the poor,</i>				148	3	3
Besides the Seat-rent part of this Mortification, which has						
all along been paid to the Board, producing p. annum				2	0	0
And the Feu-duty of shop, No. 43 Leith Street, which						
has also to be accounted for since 1852				2	15	6
				<hr/>		
			<i>Revenue,</i>	£152	18	9
				<hr/>		

2. That the Charity Workhouse Grounds, buildings thereon, and stock therein, at the passing of the Poor Law Amendment Act, having been originally part of the Common Good of the town, and liable to maintain the poor,—having in 1740 been specially appropriated to the use of the poor, and that appropriation having been repeatedly sanctioned since by the old administrators, and by the city creditors, who, beside them, had alone interest in the matter, while any contingent right therein has been abandoned and given up by both,—having been used uninterruptedly from 1740 to the present time, for the exclusive use of the poor, with the consent of all parties,—and that property, ground, and buildings, having, at the passing of the Act 1845, been held by the old administrators,—who were only found 'entitled to resume possession thereof, and 'to use the same *for the benefit of the poor,*' by decree of the Supreme Court,—that property, grounds, buildings, and stock, are poors' funds proper, in the sense of the statute, which passed by the passing of the

Poor Law Amendment Act from the old administrators to, and thereby became vested in, the Parochial Board,—the same being property heritable and movable, which at the time of the passing of the Act was vested in the old administrators and representatives of the poor, by virtue of gift, grant, and appropriation, and decree of Court, followed by uninterrupted usage of upwards of a century, for the use and benefit of the poor.

3. That, as a necessary consequence, the disposition granted by the Council to John Noble, and others, dated 15th, 16th, and 17th October 1850, of portions of the Charity Workhouse grounds therein described, for a feu-duty or ground annual, payable to the Council as a corporation, was a breach by the Council of the poors'-trust then in the Council—was *ultra vires* of the Council, and an unwarranted infringement of the rights and interests of the Parochial Board, the said portions of ground being at the date of the disposition, as now, the property of the Parochial Board, in the same way and sense as the workhouse, and other buildings, and surrounding enclosures, are the property of the Parochial Board, for the use and behoof of the poor, and that consequently the Board are entitled, and have the option, either to reduce that disposition, and resume the ground (the Council paying to the Board the ground-annuals of L.35 *per annum* they have drawn therefrom since 1845), or holding the sale by the Council—the then exclusive poors' trustees—of this part of poors' property, to be a sale for the benefit of the poor, to confirm the title (the Council repeating the ground-annuals they have drawn for the past, and the disponees paying the ground-annuals to become due to the Board for the future).

4. That the Parochial Board is entitled to Decree of Declarator in Court, or an extra-judicial Declaration of Trust from the Council—that the Council holds the Poors'-house Grounds, and Buildings thereon, as described in the original grant and appropriation thereof, for the use of the poor, under the Poor Law Amendment Act, or to demand and receive an absolute disposition thereof from the Council—at least such a disposition thereof as may be necessary to enable the 'Parochial Board' to administer the same for behoof of the poor of this parish, and that the rights of the Parochial Board, if not conceded by the Council, should be enforced against the Council in a competent action.

5. That in the event of the Poors'-house buildings being removed elsewhere, the Parochial Board would be bound to apply the price and revenues arising from the present house and grounds, to the use of the poor of this parish, but it does not appear that any other condition would attach to the ground and houses in the event stated.

6. That while the Board has undoubted right to the Paul's Work Mortification, both stock and revenue, and to the Charity Workhouse, Grounds and Buildings, including the ground annuals paid and payable for the Free North Church, the Parochial Board has no claim against the City for any other mortified moneys above stated, and that the claim therefor should at once be written off the books of the Board as satisfied.

Finally. That the Parochial Board should vindicate the Board's rights to the Paul's Work Mortification, both stock and revenue, and to the Workhouse Grounds and Buildings, including the ground annuals paid and payable for the Free North Church, if necessary, in competent actions in the Supreme Court. But, before taking action against the City, eminent counsel, learned in the law, should be consulted on this report and relative papers, and that the opinion received in answer thereto should be frankly communicated with this report, and opportunity given the Council 'with willing hearts' to 'put in oblivion all byepast enormities; embrace and entertain love and amity; and as they are of ane city, sua to be of ane mind,' and to settle amicably.

Humbly reported by

D. CURROR.

54 NORTHUMBERLAND STREET,
EDINBURGH, 1861.

